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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

2015-00327

Department

100,800 - Department of Personnel and Administration

Agency

101 - Division of Finance and Procurement

CCR number

1 CCR 101-9

Rule title

PROCUREMENT RULES

Rulemaking Hearing

Date

07/01/2015

Time

02:00 PM

Location

1525 Sherman St. Room 104

Subjects and issues involved

Update procurement rules with current practices, discontinuation of BIDS and implementation of CORE

Statutory authority

24-30-102, 24-102-101, 24-102-401 and 24-4-103, C.R.S.

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DEPARTMENT OF PERSONNEL AND ADMINISTRATION

Division of Finance and Procurement

PROCUREMENT RULES

1 CCR 101-9

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

ARTICLE 101 GENERAL PROVISIONS

PART 1 PURPOSES, CONSTRUCTION AND APPLICATION

R-24-101-101 Short title

(See Statute)

R-24-101-102 Purposes - Rules of Construction

(See Statute)

R-24-101-102-01 General

These rules implement the provisions of the Colorado Procurement Code (§24-101-101 et seq. CRS), ~~and~~ the Construction Bidding for Public Projects Act (§24-92-101 CRS et seq.), Construction Contracts with Public Entities (§24-91-101 CRS et seq.) and the Integrated Delivery Method for Public Projects Act (§24-93-101 CRS et seq.).

R-24-101-102-02 Expenditure of Funds~~.~~

These rules shall apply to every expenditure of public funds by the executive branch of this state, including federal assistance money, under any contract except supplies, services or construction as defined in Rule R-24-101-105-01.

R-24-101-103 Supplemental General Principles of Law Applicable~~.~~

(See Statute)

R-24-101-104 Requirement of Good Faith~~.~~

(See Statute)

R-24-101-105 Application of This Code~~.~~

(See Statute)

R-24-101-105-01 Applicability

The Colorado Procurement Code and these rules do not apply to the following procurements:

(a) No state funds are expended or the contract is revenue-producing. Agencies shall maximize the return to the State when revenue-producing contracts are involved. Competitive bidding is encouraged to ensure fair and open competition.

(b) The procurement is made by the legislative or judicial branch of state government.

(c) The procurement is for highway and/or bridge construction.

(d) The contract is between state agencies, between the State and a political sub-division, another state, or the federal government, or any combination as described in R-24-110-101 through R-24-110-301.

(e) The procurement is for public printing which meets the requirements of Article 109, CRS, as amended.

(f) The procurement is for services provided by architects, engineers, landscape architects, industrial hygienists, and land surveyors (Ref. 24-30-1401 through 24-30-1407).

(g) After approval of a written determination, a supplier's item is to be procured for resale; or

(h) Where the procurement of services from a specific vendor(s) is necessary to comply with the specific terms and conditions of a grant award.

(i) The awarding of grants, as the term is defined in §24-101-301 (10.5) (A), (B) CRS.

PART 2 WRITTEN DETERMINATIONS

R-24-101-201-01 Preparation and Execution

Where the Colorado Procurement Code or these rules require a written determination, the person required to prepare the determination may delegate its preparation.

R-24-101-201-02 Content

Each written determination shall set out sufficient facts, circumstances, and reasoning to substantiate the specific determination which is made.

R-24-101-201-03 Supporting Information

The person responsible for the execution of a written determination may require other state personnel, including technical personnel and appropriate personnel in the using agency, to furnish, in an accurate and adequate fashion, any information pertinent to the determination.

R-24-101-201-04 Retention

Each written determination shall be filed in the solicitation or contract file to which it applies, and shall be retained as part of such file for so long as the file is required to be maintained, as provided in Section 24-80-101 through 24-80-112.

PART 3 DEFINITIONS

R-24-101-301 Terms Defined in Colorado Procurement Code

(a) As used throughout these rules, words and terms defined in the Colorado Procurement Code shall have the same meaning as in the Code.

(b) "Commodity" as used in these Rules shall have the same meaning as "product".

(c) "Product" means anything that is produced or manufactured and that may be obtained, or needs to be obtained, by the State, either in and of itself, or in conjunction with services. As used in these Rules, "Product," "Supplies," and "Commodity" shall have essentially the same meaning.

PART 4 PROCUREMENT RECORDS AND INFORMATION

(See Statute)

ARTICLE 102 PROCUREMENT ORGANIZATION

PART 1 EXECUTIVE DIRECTOR, DEPARTMENT OF ADMINISTRATION

(See Statute)

PART 2 DIVISION OF PURCHASING

R-24-102-201 Creation of the Division of Purchasing

(See Statute)

R-24-102-201 State Purchasing Director

The State Purchasing Director referred to in these rules shall be appointed by the Executive Director of the Department of Personnel and shall have these powers and duties through delegation from the Executive Director. Any powers and duties not so delegated remain with the Executive Director.

R-24-102-201 State Purchasing Director

(See Statute)

R-24-102-202-01 Mandatory and Permissive Price Agreements

(a) The State Purchasing Director may issue mandatory or permissive price agreements for supplies or services for use by all state agencies and institutions.

(b) Mandatory price agreements shall be used by all agencies and institutions if and when the supplies or services are needed. Any agency or institution desiring to purchase supplies or services of a similar nature other than those on a mandatory price agreement must request and receive written authorization to do so by the Division of Purchasing.

(c) Permissive price agreements may be used by all agencies and institutions if and when the supplies or services are needed. If supplies or services contained on permissive price agreements are not used by agencies or institutions, the needs must be submitted for competition as provided by these rules.

R-24-102-202.5-01 Electronic Procurement Systems~~Bid Information and Distribution System (BIDS)~~.

Definitions

~~(a) "Bid Information and Distribution System" (BIDS)~~Electronic Procurement Systems ~~means the centrala database and notification system created pursuant to §24-102-202.5 CRS.~~

(~~b~~a) "Construction Project," for purposes of Rule R-24-102-202.5-04, means any procurement that meets the definition of a "public project," as defined in §24-92-102(8) CRS, or any procurement that meets the definition of "construction" as defined in §24-101-301 CRS.

(b) "Electronic Procurement Systems" means database and notification systems" created pursuant to §24-102-202.5 CRS.

R-24-102-202.5-02 Use of ~~BIDS~~Electronic Procurement Systems - Goods and Services

~~(a)~~ ~~BIDS~~An Electronic Procurement System shall be the ~~only~~ notification method ~~required~~ for competitive solicitations for goods and services made through Invitations for Bids (IFB), Requests for Proposals (RFP), and Documented Quotes (DQ).

~~(b) Except as provided in paragraph (c) below, bids, proposals, and quotes shall not be deemed responsive unless the responding vendor is registered for BIDS.~~

~~(c) When the director or head of a purchasing agency or delegate believes that BIDS is not likely to yield adequate competition, the following procedure can be used if the following paragraph appears in the solicitation document: "Because of the limited competition expected from registered BIDS vendors on this solicitation, the procuring agency intends to use both BIDS and additional methods of vendor notification and may make the specifications available to non-registered vendors through additional means. However, quotes, bids or offers submitted by non-~~

~~registered vendors will not be opened or considered (except as necessary to determine BIDS registration status) unless, after examination of quotes/bids/offers submitted by BIDS registered vendors, it is determined that there is not adequate competition among BIDS registered vendors. If adequate competition exists among registered vendors, quotes, bids, or proposals from non-registered vendors will not be considered. A vendor is considered registered if its registration and payment is received in the State Purchasing Office prior to the bid opening time or the due date for receipt of quotes."~~

R-24-102-202.5-03 ~~BIDS~~Electronic Procurement Systems Fees

~~(a)~~ The ~~BIDS~~ fee structure for use of Electronic Procurement Systems shall be set by the State Purchasing Director.

~~(b) Every vendor wishing to be listed on the BIDS vendor database shall pay an annual registration fee. Where a corporation has subsidiaries, each subsidiary requesting a listing in BIDS shall be deemed to be a separate entity and shall pay a separate fee.~~

~~(c) Additional fees may be set by the State Purchasing Director.~~

R-24-102-202.5-04 Use of ~~BIDS~~Electronic Procurement Systems - Notice of Construction Projects and Professional Services

For all construction projects and for all procurements for professional service ~~procurements~~ (as defined in §24-30-1402(6) CRS) for which competitive notification or solicitation procedures are required, a notification must be placed on ~~BIDS~~an Electronic Procurement System, and the award must be posted on ~~BIDS~~an Electronic Procurement System.

(a) Detailed specifications shall not be included in the notice, and all information must be open to public view, without password protection.

(b) Contractors/bidders need not be registered for ~~BIDS~~an Electronic Procurement System in order to be deemed responsive.

(c) This requirement is in addition to, and does not supersede, any advertisement, notification, or solicitation procedures required by statute or rule.

R-24-102-204 Delegation of Authority by State Purchasing Director

(See Statute)

R-24-102-204-01 Purchasing Delegation Limits~~.~~

Purchasing delegations will have limits as described in Rule R-24-103-204 and all associated subparagraphs. An agency that receives limited purchasing authority shall be referred to as a "Group I Agency", and an agency that receives an unrestricted purchasing delegation shall be referred to as a "Group II Agency".

R-24-102-204-02 Delegation Criteria~~.~~

Recognizing the importance of local control to meet local needs, delegation of purchasing authority is encouraged where efficient.

(a) Minimum criteria to receive a Group I purchasing delegation shall include:

(i) a signed ~~D~~delegation ~~A~~agreement between the Department ~~of Personnel~~ and the delegated agency or the governing board of a college or university, and

(ii) successful completion by staff of training by the Division of Purchasing, and

(iii) use of ~~the Bid Information and Distribution System (BIDS)~~an Electronic Procurement System~~, if and when made available by the Division of Purchasing~~.

(b) Minimum criteria to receive a Group II purchasing delegation shall include:

(i) a signed ~~D~~delegation ~~A~~agreement between the Department ~~of Personnel~~ and the delegated agency or the governing board of a college or university, and

(ii) demonstrated need, and

(iii) demonstrated existing staff competency in state purchasing, and

(iv) an automated purchasing system, and

(v) use of an Electronic Procurement System~~the Bid Information and Distribution System (BIDS)~~.

R-24-102-206 Contract Performance Outside the United States or Colorado – Notice - Penalty

R 24-102-206-01 ~~Office of the State Architect – Construction Services~~

~~The office of the state architect will collect the data required by this section for State construction contracts and publish on their website.~~

~~R-24-102-206-02 State Purchasing Office~~Department ~~– Construction and Other~~ Services Contracts

The ~~State purchasing office~~Department will collect the data required by this section for all ~~non-construction and other~~ services contracts, including contracts for construction services ~~and post it on the State purchasing website~~.

R24-102-206-0~~3~~2 Written Notice and Post of Notice Timeline

Pursuant to §24-102-206(3) CRS, a governmental body will provide written notice to the Department of Personnel within 30 calendar days from the vendor's notice to the governmental body. Pursuant to §24-102-206(5) CRS, the Executive Director will post on the official web site of the Department any notice that a vendor provides to a governmental body within 30 calendar days of notice from the governmental body.

PART 3 ORGANIZATION OF PUBLIC PROCUREMENT

(See Statute)

PART 4 STATE PROCUREMENT RULES
(See Statute)

PART 5 COORDINATION

(See Statute)

ARTICLE 103 SOURCE SELECTION AND CONTRACT FORMATION

PART 1 DEFINITIONS

(See Statute)

R24-103-101-01 Terms Defined in This ~~Chapter~~Article.

As used in this ~~chapter~~Article, unless the context otherwise requires:

(a) "Acceptable Bid" means an offer submitted by any person in response to an Invitation for Bid issued by the State that is in compliance with the solicitation terms and conditions and within the requirements of the plans and specifications described and required therein.

(b) "Adequate Competition" exists if a competitive sealed bid or competitive sealed proposal has been conducted and at least two responsible and responsive offerors have independently competed to provide the State's needed product or services. If the foregoing conditions are met, price competition shall be presumed to be "adequate" unless the procurement officer determines, in writing that such competition is not adequate.

(c) "Alternate Bid" means an offer submitted by any person in response to an Invitation for Bid issued by the State that is in essential compliance with the solicitation terms and conditions but which may offer an alternate that does not significantly deviate from the required specifications contained in the solicitation. The soliciting agency would be responsible for determining whether an alternate bid is acceptable.

(d) "Colorado Labor" shall have the same definition as used in §8-17-101(2)(a), C~~.~~R~~.~~S.

(e) "Competitive Negotiation" means the process of discussion and issue resolution between a procurement official and a prospective vendor in

order to arrange for the providing of a product or service needed by the State. If more than one vendor is available for such negotiation, the needs of the State must be clearly defined in advance of any negotiations, via a specification that details fully the State's intended procurement.

(f) "Cost of Ownership Life Cycle Analysis" means an accounting of the estimated total cost of ownership, including but not limited to: initial costs, operational costs, longevity, stranded utility costs, and service and disposal costs, along with an assessment of life-cycle environmental, health and energy impacts resulting from new material extraction, transportation, manufacturing, use, and disposal.

(g) "Documented Quotation" or "Request for Quotation (RFQ)" is a process of soliciting informally for fulfilling the State's need for a specific product(s) or service(s) and receiving and evaluating vendor responses. The dollar limits for use of documented quotations shall be as stated in the Section on Small Purchases and shall be conducted only by a procurement officer or designee.

(h) "Environmentally Preferable Products" -means products or services that have a lesser or reduced adverse effect on human health and the environment when compared with competing products or services that serve the same purpose. The product or service comparison may consider such factors as the availability of any raw materials used in the product or service being purchased and the availability, use, production, safe operation, maintenance, packaging, distribution, disposal, or recyclability of the product or service being purchased.

(i) "Nationally Recognized Third-party Certification Entity" means a voluntary, multiple criteria-based program that awards a certification after independently reviewing the product or service on its cost of ownership and life cycle and meets criteria for overall environmental preferability and product function characteristics. The Colorado Energy Office or any successor office maintains a listing of eligible entities.

(j) "Non-Resident bidder" shall have the same meaning as in §8-19-102(1), C.R.S.

(k) "Public Works Project" shall have the same definition as "Public Project" as defined in §8-19-102(2), C.R.S.

(l) "Request for Proposals (RFP)" is the commonly used name for competitive sealed proposals. Formal RFPs shall be used in all cases where the total expected cost of the procurement is in excess of the small purchase threshold and the provisions of §24-101-203 CRS apply. Procurements for which the resulting contract is expected to be for more than one fiscal period must take into account the costs for the full life of any resulting contract to determine total expected cost.

(m) "Resident bidder" shall have the same definition as in §8-19-102(3), C.R.S.

(n) "Responsible Vendor" means a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.

(o) "Sealed" means that the Bid, Proposal, or Best Value Bid must be submitted in a manner that:

(i) Ensures that the contents of the bid, proposal, or best value bid cannot be opened or viewed before the formal bid opening without leaving evidence that the document has been opened or viewed; and

(ii) Ensures that the document cannot be changed, once received by the State, without leaving evidence that the document has been changed: and

(iii) Bears a physical or electronic signature evincing an intent by the bidder or offeror to be bound. An electronic signature must comply with the definitions and requirements set forth in the Government Electronic Transactions Act, §24-71.1-101 et seq. C.R.S. and its implementing rules; and

(iv) Records, manually or electronically, the date and time the bid, proposal, or best value bid is received by the state and that cannot be altered without leaving evidence of the alteration.

(p) "Substitute Bid" means an offer submitted by any person in response to an Invitation for Bid that is not in substantive compliance with the terms and conditions and specifications of the solicitation as issued. A substitute bid, by this definition, would generally be considered non-responsive to the requirements of the solicitation and would serve the sole purpose of advising the soliciting agency that a different specification could be used to provide the desired or similar product or service. The soliciting agency would be responsible for determining whether the substitute language would be justification for canceling the bid and re-soliciting.

PART 2 METHODS OF SOURCE SELECTION

R-24-103-201 Methods of Source Selection

(See Statute)

R-24-103-202a Competitive Sealed Bidding (other than construction)

R-24-103-202a-01 Invitation for Bids

(a) Bidding Policy. It shall be the policy of the State of Colorado to purchase products, commodities, services, and construction in a manner that affords businesses a fair and equal opportunity to compete.

(b) Specifications. Purchasing agencies shall issue product, supply, service, or construction specifications which are not unduly restrictive. Brand name specifications, brand name or equal specifications, or qualified products lists shall only be used in accordance with the provisions of Rules R-24-104-202, -01, -02.

Purchasing agencies may utilize life cycle costing and/or value analysis in determining the lowest responsible bidder. In bids where life cycle costing or value analysis is to be used, the specifications shall indicate the procedure and valuation~~ve~~ factors to be considered.

When appropriate, specifications issued and/or used by the federal government, other public procurement units or professional organizations may be referenced by the State ~~of Colorado~~. Bidders may be required to certify that these standardized specifications have been met.

(c) Solicitation Time. Except as provided under emergency procedures, the minimum time for the bid opening date shall be not less than 14 calendar days after posting the solicitation on ~~BIDS~~an Electronic Procurement System. When special requirements or conditions exist, the head of a purchasing agency may lengthen or shorten the bid time, but in no case shall the time cycle be shortened to reduce competition. Solicitation periods of less than 14 calendar days shall be documented by the head of the purchasing agency as to why a reduced bid period was required.

R-24-103-202a-02 Pre-Bid Conferences~~.~~

Pre-bid conferences may be conducted to explain the procurement requirements~~. I if conducted T~~they ~~shall be announced~~are provided for in ~~to all prospective bidders known to have received an~~with ~~the~~ Invitation for Bid. The conference should be held long enough after the Invitation for Bid has been issued, to allow bidders to become familiar with it, but with adequate time before bid opening to allow bidders consideration of the conference results in preparing their bids. Nothing stated at the pre-bid conference shall change the Invitation for Bids unless a change is made by written amendment, posted on ~~BIDS~~an Electronic Procurement System.

R-24-103-202a-03 Amendments to Invitations for Bids

Amendments to Invitations for Bids shall be identified as such and may require that the bidder acknowledge receipt of all amendments issued. The amendment shall reference the portions of the Invitation for Bids it amends. Amendments shall be posted on ~~BIDS~~an Electronic Procurement System with sufficient time to allow
prospective bidders to consider them in preparing their bids. If the time set for bid opening will not permit such preparation prior to bid opening, such time shall be increased in the amendment.

R-24-103-202a-04 Withdrawal of Bids

(a) Withdrawal of Bids Prior to Bid Opening. Any bid may be withdrawn from the appropriate purchasing agency prior to the specified bid opening date and time.

(b) Withdrawal of Bids after Bid Opening but Prior to Award. The Director or head of a purchasing agency may allow a bid to be withdrawn after bid opening but prior to award provided:

(i) the bidder provides evidentiary proof that clearly and convincingly demonstrates that a mistake was made in the costs or other material matter provided; or

~~(ii)~~ the mistake is clearly evident on the face of the bid; and

(ii~~i~~) it is found to be (by the Director or head of the purchasing agency) unconscionable not to allow the bid to be withdrawn.

(c) Procedure. Bids may be withdrawn by written notice received in the office designated in the Invitation for Bids prior to the time set for bid opening. ~~A telegraphic withdrawal received by telephone from the telegraph company, prior to bid opening, will be effective if the telegraph company confirms the message by sending a copy of the telegram showing that the message was received at such office prior to bid opening.~~

R-24-103-202a-05 Telephone Bids~~.~~

Telephone bids from vendors will not be accepted, except as allowed in Rule R-24-103-204-03 and unless the Director or head of a purchasing agency makes a written determination that market conditions are of such nature that it is in the best interest of the State to solicit telephone bids.

Comment: An example of when the Director or head of a purchasing agency may approve telephone bids is in the procurement of petroleum fuels where the market price may change on a daily basis.

R-24-103-202a-06 Electronic Bids~~.~~

Bids may be submitted electronically when: The terms of the solicitation expressly permit electronic submission and the requirements of one of the following statutes or rules are met: Rule R-24-103-101-01(h), §24-103-204 CRS, or §24-103-206 CRS.

R-24-103-202a-07 Timeliness of Bids~~.~~

Bids received after the bid opening time shall not be opened, but shall be rejected as a late bid. The following exceptions are permitted by the director or head of a purchasing agency:

(a) If prior to a specified opening time and date, the mail, either directly by the post office or by internal distribution system, has not been delivered, any bid received by the next same-day delivery may be accepted if it is reasonable to believe the bid response was in the delivery process which was not completed prior to the opening time and date. All Invitations for Bids utilizing this exception must so state in the terms and conditions of the Invitation for Bids.

(b) In the event of a labor unrest (strike, work slowdown, etc.) which may affect mail delivery, the Director is authorized to develop and issue emergency procedures.

(c) In any other situation that is beyond the control of the State or the vendor, the director or the head of a purchasing agency shall rule on the acceptability of the bid. However, under no circumstances shall a late bid be accepted if the bid was still within the control of the vendor at the time the bid opening actually occurred.

In those situations where the late bid was not in the control of the vendor at the time of the bid opening, the director or head of a purchasing agency shall not accept the late bid unless he/she further finds that extraordinary circumstances exist. The responsibility for ensuring that the bid is received on time rests with the vendor, and the reasonably foreseeable problems inherent in the delivery of bids (e.g. slow messengers, slow mail service, weather, bad directions, mechanical failures, traffic, etc.) are not extraordinary circumstances permitting acceptance of late bids.

R-24-103-202a-08 Bid Receipt, Opening, and Recording

(a) Receipt. Upon receipt, each bid and modification shall be time-stamped by machine or by hand and shall be stored in a secure place until bid opening time. Bids and modifications shall not be opened upon receipt, except that unidentified bids and modifications may be opened for identification purposes. The purchasing employee will immediately reseal the bid or modification and attest in writing that the employee has not revealed the contents of the envelope.

(b) Opening and Recording. All bid openings shall be open to the public and/or interested parties. Bids and modifications shall be opened, in the presence of one or more witnesses, as soon as possible after the time, and at the place, designated in the Invitation for Bids. The name of each bidder, the bid price(s) (unless otherwise provided in the Invitation for Bids), and other information deemed appropriate by the Procurement Officer shall be read aloud at the time of bid opening.

Reading of all bid item prices may not be reasonable or desired (e.g., in the case of lengthy or complex bids). The decision not to read all bid prices shall be made by the Procurement Officer and shall be stated in the Invitation for Bids.

The name of each bidder, amount of bid, delivery, names(s) of witness(es) and other relevant information shall be entered into the record and the record shall be available for public inspection.
Prior to award, copies of pricing information not read aloud at the bid opening shall be made reasonably available for inspection, if requested. Other information related to a bid, or a bidder's responsiveness, may be withheld from inspection until such determinations have been made.
After award, all bid documents, and a complete bid analysis, shall be open to public inspection except to the extent the State has approved a bidder's request that trade secrets or other proprietary data be held confidential as set forth below. Material so designated shall accompany the bid and shall be readily separable from the bid in order to facilitate public inspection of the nonconfidential portion of the bid.

(c) Confidential Data. The Procurement Officer shall determine the validity of any written requests for nondisclosure of trade secrets and other proprietary data. If the parties do not agree as to the disclosure of data, the Procurement Officer shall inform the bidder(s) in writing what portions of the bids will be disclosed, and that unless the bidder protests under Article 109, Part 1, of the Colorado Procurement Code, the bids will be so disclosed.

After award, the bids shall be open to public inspection subject to any continued prohibition on the disclosure of confidential data.

R-24-103-202a-09 Mistakes in Bids

(a) Confirmation of Bid. When it appears from a review of the bid that a mistake has been made, the bidder should be requested to confirm the bid. Situations in which confirmation should be requested include obvious, apparent errors on the face of the bid or a bid unreasonably lower than the other bids submitted. If the bidder alleges mistake, the bid may be withdrawn if the conditions set forth in this section are met.~~, provided that no correction or withdrawal of bids shall be allowed after award.~~

(b) Minor Informalities. Minor informalities are matters of form rather than substance evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders; that is, the effect on price, quantity, quality, delivery, or contractual conditions is negligible. The Procurement Officer may waive such informalities or allow the bidder to correct them depending on which is in the best interest of the state. Examples include the failure of a bidder to:

(i) return the number of signed bids required by the Invitation for Bids;

(ii) sign the bid, but only if the unsigned bid is accompanied by other material indicating the bidder's intent to be bound;

(iii) acknowledge receipt of an amendment to the Invitation for Bids, but only if:

(~~a~~A) It is clear from the bid that the bidder received the amendment and intended to be bound by its terms; or

(~~b~~B) the amendment involved had a negligible ~~a~~effect on price, quantity, quality, or delivery.

(~~c~~C) Mistakes Where Intended Correct Bid Is Evident. If the mistake and the intended correct bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices and transposition errors.

(~~d~~D) Mistakes Where Intended Correct Bid Is Not Evident. A bidder may be permitted to withdraw a low bid if the bidder submits proof of evidentiary value which clearly and convincingly demonstrates that a mistake was made.

(eE) Determinations Required. Any decision to permit or deny correction or withdrawal of a bid under this section shall be supported by a written determination prepared by the director or head of a purchasing agency or their designee.

R-24-103-202a-10 Bid Evaluation and Award.

All products and services shall be evaluated against the specifications and/or brand names used as a reference and other evaluation criteria in the Invitation for Bid.

For example, the following factors may be considered in evaluating any bid response: delivery date after receipt of order; cash discounts; warranties (type and length); future availability; results of product testing; local service; cost of maintenance agreements; future trade-in value or availability of repurchase agreement; availability of training courses; financial terms if not a cash purchase; space limitations; esthetics; adaptability to environment; cost of operation (if any); safety and health features relating to codes, regulations, or policies.

(a) Product Acceptability. The Invitation for Bids may require the submission of bid samples, descriptive literature, technical data, or other material necessary to determine product acceptability. If bid responses are received that do not contain the required submission data, they may be rejected as nonresponsive. The Invitation for Bids may also provide for accomplishing any of the following prior to award:

(i) inspection or testing of a product prior to award for such characteristics as function, quality or workmanship;

(ii) examination of such elements as appearance, finish, taste, or feel; or

(iii) other examinations to determine whether it conforms with other specifications.

The acceptability evaluation is not conducted for the purpose of determining whether one bidder's item is superior to another but only to determine whether a bidder's offering will meet the State's needs as set forth in the Invitation for Bids. Any bidder's offering which does not meet the acceptability requirements shall be rejected as nonresponsive.

(b) Determination of Lowest Bidder. Following determination of product acceptability, bids shall be evaluated to determine which bidder offers the lowest cost to the State in accordance with specifications. They may be evaluated in accordance with value analysis or life cycle cost formulas. If such formulas are to be used, they shall be objectively measurable and shall be set forth in the Invitation for Bids. Such evaluation factors need not be precise predictors of actual future costs, but to the extent possible they shall:

(i) be reasonable estimates based upon information the State has available concerning future use; and

————(ii) treat all bids equitably.

(c) Restrictions. A contract may not be awarded to a bidder submitting a higher quality item than that designated in the Invitation for Bids unless such bidder is also the lowest bidder as determined by value analysis or life cycle cost formulas as permitted in this section.

(d) Environmentally Preferable Products. The provisions of §24-103-207.5 CRS which require a preference for environmentally preferable products apply to the award of contracts under this section. The purchasing preference applies to products and services that have a lesser or reduced adverse effect on human health and the environment than comparable competing products. When the conditions of §24-103-207.5 CRS subsections (3)(a) through (f) have been met, agencies shall award bids for environmentally preferable products or services that cost no more than five percent more than the lowest bid. However, agencies may award the contract to a bidder who offers environmentally preferable products and services which exceed the lowest bid by more than five percent if a cost of ownership life-cycle analysis establishes that long term savings to the ~~s~~State will result. In addition, each purchasing agency must ensure that the purchase can be accommodated within an agency's existing budget.

R-24-103-202a-11 Disposition of Bid Surety~~.~~

If a bid is withdrawn in accordance with this section, any bid surety shall be returned to the bidder in a timely manner.

R-24-103-202a-12 Multi-Step Sealed Bidding~~.~~

(a) Definition. Multi-step sealed bidding is a two-phase process consisting of a technical first phase composed of one or more steps in which bidders submit un-priced technical offers to be evaluated by the State. The second phase will consider only those bidders whose technical offers were determined to be acceptable during the first phase and, therefore, their price bids will be opened and considered. It is designed to obtain the benefits of competitive sealed bidding by award of a contract to the lowest responsive, responsible bidder, and at the same time obtain the benefits of the competitive sealed proposals procedure through the solicitation of technical offers and the conduct of discussions to evaluate and determine the acceptability of technical offers.

(b) Conditions for Use. The multi-step sealed bidding method may be used when it is not practical to prepare, initially, a definitive purchase description which would be suitable to permit an award based on price.

R-24-103-202a-13 Records~~.~~

All documents relating to the modification or withdrawal of bids shall be made a part of the appropriate procurement file.

R-24-103-202b Competitive Sealed Bidding - Construction

R-24-103-202b-01 General Provisions.

(a) Extension of Time for Bid or Proposal Acceptance. After opening bids, the Procurement Officer may request low bidders to extend the time during which the State may accept their bids, provided that no other change is permitted. The reasons for requesting such extension shall be documented.

(b) One Bid Received. If only one responsive bid is received in response to an Invitation for Bid (including multi-step bidding), an award may be made to the single bidder if the Procurement Officer finds that the price submitted is fair and reasonable and that either other prospective bidders had reasonable opportunity to respond, or there is not adequate time for re-solicitation. Otherwise the bid may be rejected pursuant to the provisions of Rule R-24-103-301, (Cancellation of Solicitations; Rejection of Bids or Proposals) and

(i) new bids may be solicited;

(ii) the proposed procurement may be cancelled; or

(iii) If the Director or head of a purchasing agency determines in writing that the need for the construction continues but that the price of the one bid is not fair and reasonable and there is no time for re-solicitation or re-solicitation would likely be futile, the procurement may then be conducted under Rule R-24-103-205 (Sole Source Procurement) or Rule R-24-103-206 (Emergency Procurements), as appropriate.

(c) Multiple or Alternate Bids. The solicitation shall prohibit multiple or alternate bids unless such bids are specifically provided. When prohibited the multiple or alternate bids shall be rejected although a clearly indicated base bid will be considered for award as though it were the only bid or offer submitted by the bidder. The provisions of this Section shall be set forth in the solicitation, and if multiple or alternate bids are allowed, it shall specify their treatment.

(d) Combining Bids or Offers Not Acceptable. Any bid or offer which is conditioned upon receiving award of both the particular contract being solicited and another State contract shall be deemed nonresponsive and not acceptable.

(e) Affiliates are prohibited from submitting bids for the same contract. Affiliates are defined as any individuals, partnerships, corporations, joint ventures, companies, firms, contractors or other legal entities, if directly or indirectly, either (i) one controls or can control the other, or (ii) a third controls or can control both.

(f) Purchase of Items Separately from Construction Contract. The Director or head of a purchasing agency is authorized to determine whether a supply item or group of supply items shall be included as a part of, or procured separately from, any contract for construction.

(g) Standard Forms. All construction bidding and contracting procedures shall utilize standard Sstate ~~of Colorado~~ forms which are ~~listed below or their revisions and are~~ available on-line from the website of the Office

of the State Architect website.:Central Stores, Division of Central Services, Department of Personnel:

(i) State Form SC-6.11; Advertisement for Bids

(ii) State Form SC-6.12; Information for Bidders

(iii) State Form SC-6.13; Proposal

(iv) State Form SC-6.14; Bid Bond

(v) State Form SC-6.15; Notice of Award

(vi) State Form SC-6.21; Agreement

(vii) State Form SC-6.22; Performance Bond

(viii) State Form SC-6-221; Labor and Material Payment Bond

(ix) State Form SC-6.23; The General Conditions of the Contract

(x) State Form SC-6.26; Notice to Proceed

(xi) State Form SC-6.27; Notice of Acceptance

(xii) State Form SC-7.3; Notice of Contractor's Settlement

Any changes or modifications of the printed state forms, including General Conditions of the Contract, shall not be deemed valid unless issued in the form of Supplementary General Conditions and approved by the Principal Representative, as defined in the state contract, and the State Buildings SectionOffice of the State Architect.

(h) Competitive Sealed bidding may be used on projects that have no federal funding involved, pursuant to §24-92-103, C.R.S.

R-24-103-202b-02 Invitation for Bids.

(a) Content. The Invitation for Bids shall include the following:

(i) instructions and information to bidders concerning the bid submission requirements, including the time and closing date for submission of bids, the address of the office to which bids are to be delivered, the maximum time for bid acceptance by the State, and any other special information.

(ii) the purchase description, evaluation factors, delivery or performance schedule, and inspection and acceptance requirements not included in the purchase description; and

(iii) the contract terms and conditions, including warranty and bonding or other security requirements, as applicable.

(b) Incorporation by Reference. The Invitation for Bids may incorporate documents by reference provided that the Invitation for Bids specifies where such documents can be obtained.

(c) Acknowledgment of Addenda. The Invitation for Bids shall require the acknowledgment of the receipt of all addenda issued.

(d) Bidding Time. Bidding time is the period of time between the date of the Advertisement for Bids and the date set for opening of bids. In each case bidding time will be set up to provide bidders a reasonable time to prepare their bids, but in no event shall this time be less than fourteen days as provided in Section §24-103-202(3)CRS.

R-24-103-202b-03 Bidder Submissions.

(a) Bid Form. The Invitation for Bids shall provide a form which shall include space in which the bid price shall be inserted and which the bidder shall sign and submit along with all other necessary submissions.

Bidders must execute and submit bids on the form as prescribed by the Department of Personnel, State Buildings SectionOffice of the State Architect, and as specified by the Invitation for Bids. A bid received on any other form will be cause for that bid being deemed unresponsive.

(b) Telegraphic Bids. Telegraphic Bids and mailgrams will not be accepted or considered, but will be rejected.

R-24-103-202b-04 Public Notice.

(a) Distribution. Notice of the Invitation for Bids will be advertised according to the provisions of Section §§24-70-101 through 107 CRS and these Rules.

The Notice will be advertised in The Daily Journal, Denver, Colorado, and in a newspaper of general circulation which is printed and/or published electronically in the municipality nearest the location of the construction site as described in the Invitation for Bids, and. Publication of the advertisement shall occur twice, one week apart, or in an electronic medium approved by the Executive Director of the Department of Personnel pursuant to §24-92-103(3)CRS. Publication of the Notice shall occur twice, one week apart. Additionally, a copy of the Advertisement for Bids shall be sent to the Colorado Minority Business Development Agency, with a set of Bid Documents attached thereto. Nothing in these rules shall prevent the Procurement Officer from advertising or otherwise giving public notice in additional media and locations; and/or more than twice as described above.

The Notice of the Invitation for Bids shall include the following information and statements:

(i) date, time and location of the bid opening

(ii) project number, name and location

(iii) project time of completion

(iv) location where Bidding Documents may; be obtained

(v) deposit required, if any, for a complete set of Contract Documents

(vi) "Preference shall be given to Colorado resident bidders and for Colorado labor as provided by law."

(vii) "The rate of wages to be paid for all laborers and mechanics shall be in accordance with the applicable Davis-Bacon rates of wages for the project. Such rates will be specified in the General Documents."

(viii) any other appropriate information. A copy of the Invitation for Bid shall be made available for public inspection at the ~~o~~Office of the State Architect~~Buildings Section~~.

(b) Pre-Bid Conferences. Pre-bid conferences may be conducted to explain the procurement requirements. They shall be announced to all prospective bidders known to have received an Invitation for Bids. The conference should be held long enough after the Invitation for Bids has been issued to allow bidders to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in preparing their bids. Nothing stated at the pre-bid conference shall change the Invitation for Bids unless a change is made by written addendum as provided in Rule R-24-103-202b-05 (Addenda to Invitations for Bids) and the Invitation for Bids and the notice of the pre-bid conference shall so provide.

R-24-103-202b-05 Addenda to Invitation for Bids~~.~~

(a) Form. Addenda to Invitations for Bids shall be identified as such and shall require that the bidder acknowledge receipt of all amendments issued. The addenda shall reference the portions of the Invitation for Bids it amends.

(b) Distribution. Addenda shall be sent to all prospective bidders known to have received an Invitation for Bids.

(c) Timeliness. Addenda shall be distributed within a reasonable time to allow prospective bidders to consider them in preparing their bids.

R-24-103-202b-06 Pre-Opening Modification or Withdrawal of Bids~~.~~

(a) Procedure. Bids may be modified or withdrawn by written notice received in the office designated in the Invitation for Bids prior to the time set for bid opening.

(b) Disposition of Bid Security. Bid security, if any, shall be returned to the bidder when withdrawal of the bid is permitted.

(c) Records. All documents relating to the modification or withdrawal of bids shall be made a part of the appropriate procurement file.

R-24-103-202b-07 Timeliness of Bids

Bids received after the bid opening time shall not be opened, but shall be rejected as a late bid. The following exceptions are permitted by the director or head of a purchasing agency:

(a) If prior to a specified opening time and date, the mail, either directly by the post office or by internal distribution system, has not been delivered, any bid received by the next same-day delivery may be accepted if it is reasonable to believe the bid response was in the delivery process which was not completed prior to the opening time and date. All invitations for bids utilizing this exception must so state in the terms and conditions of the invitation for bids.

(b) In the event of a labor unrest (strike, work slow down, etc.) which may affect mail delivery, the director is authorized to develop and issue emergency procedures.

(c) In any other situation that is beyond the control of the state or the vendor, the director or the head of a purchasing agency shall rule on the acceptability of the bid. However, under no circumstances shall a late bid be accepted if the bid was still within the control of the vendor at the time the bid opening actually occurred.

In those situations where the late bid was not in the control of the vendor at the time of the bid opening, the director or head of a purchasing agency shall not accept the late bid unless he/she further finds that extraordinary circumstances exist. The responsibility for ensuring that the bid is received on time rests with the vendor, and the reasonably foreseeable problems inherent in the delivery of bids (e.g. slow messengers, slow mail service, weather, bad directions, mechanical failures, traffic, etc.) are not extraordinary circumstances permitting acceptance of late bids.

R-24-103-202b-08 Receipt, Opening, and Recording of Bids~~.~~

(a) Receipt. Upon receipt, all bids and modifications will be date and time-stamped but not opened.

(b) Opening and Recording. Bids and modifications shall be opened publicly, in the presence of one or more witnesses, at the time and place designated in the Invitation for Bids. The names of the bidders, the bid price, attendees received, alternatives, bid security, time of completion, and such other information as is deemed appropriate by the Procurement Officer, shall be read aloud or otherwise made available. Such information also shall be recorded at the time of bid opening; that is, the bids shall be tabulated or a bid abstract made. The names and addresses of required witnesses shall also be recorded at the opening. The opened bids shall be recorded at the opening. The opened bids shall be available for public inspection except to the extent the bidder designates trade secrets or other proprietary data to be confidential as set forth in ~~S~~subsection R-24-103-202b-08(c) of this ~~Section~~Rule. Material so designated shall accompany the bid and shall be readily separable from the bid in order to facilitate public inspection of the nonconfidential portion of the bid.

(c) Confidential Data. The Procurement Officer shall examine the bids to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data identified in writing. Such requests shall be submitted by the bidder prior to the bid opening under separate cover. If the parties do not agree as to the disclosure of data, the Procurement Officer shall inform the bidders in writing what portions of the bids will be disclosed and that, unless the bidder protests under Article 109 (Remedies) of the ~~State~~ Colorado Procurement Code, the bids will be so disclosed. The bids shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.

R-24-103-202b-09 Mistakes in Bids~~.~~

(a) General. Correction or withdrawal of a bid because of an inadvertent, non-judgmental mistake in the bid requires careful consideration to protect the integrity of the competitive bidding system, and to assure fairness. If the mistake is attributable to an error in judgment, the bid may not be corrected. Bid correction or withdrawal by reason of a non-judgmental mistake is permissible but only to the extent it is not contrary to the interest of the State or the fair treatment of other bidders.

(b) Mistakes Discovered Before Opening. A bidder may correct mistakes discovered before bid opening by withdrawing or correcting the bid as provided in Rule R-24-103-202b-06 (Pre-Opening Modification or Withdrawal of Bids).

(c) Confirmation of Bid. When it appears from a review of the bid that a mistake has been made, the bidder should be requested to confirm the bid. Situations in which confirmation should be requested include obvious, apparent errors on the face of the bid or a bid reasonably lower than the other bids submitted. If the bidder alleges mistake, the bid may be corrected or withdrawn if the conditions set forth in S~~s~~ub~~-~~section R-24-103-202b-09~~-~~(d)~~-~~(i) through R-24-103-202b-09~~-~~(d)~~-~~(iii) of this ~~Section~~ Rule are met.

(d) Mistakes Discovered After Opening But Before Award. This S~~s~~ub~~-~~section sets forth procedures to be applied in three situations described in S~~s~~ub~~-~~section R-24-103-202b-09(d)(i) through R-24-103-202b-09(d)(iii) below in which mistakes in bids are discovered after opening but before award.

(i) Minor Informalities. Minor informalities are matters of form rather than substance evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice or other bidders. The Procurement officer shall waive such informalities or allow the bidder to correct them depending on which is in the best interest of the State.

(ii) Mistakes Where Intended Correct Bid Is Evident. If the mistake and the intended correct bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.

(iii) Mistakes Where Intended Correct Bid Is Not Evident. A bidder may be permitted to withdraw a low bid if:

(A) a mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident, or

(B) the bidder submits proof of evidentiary value which clearly and convincingly demonstrates that a mistake was made.

(e) Mistakes Discovered After Award. Mistakes shall not be corrected after award of the contract except where the Director or the head of a purchasing agency makes a written determination that it would be unconscionable not to allow the mistake to be corrected or the bid withdrawn.

(f) Determination Required. When a bid is corrected or withdrawn, or correction or withdrawal is denied under ~~S~~sub~~-~~sections R-24-103-202b-09(d) or R-24-103-202b-09(e) of this ~~Section~~Rule, the Director or the head of a purchasing agency shall prepare a written determination showing that the relief was granted or denied in accordance with these regulations, except that the Procurement Officer shall prepare the determination required under ~~S~~sub~~-~~section R-24-103-202b-09(i) of this ~~Section~~Rule.

R-24-103-202b-10 Bid Evaluation and Award

(a) General. The contract is to be awarded "to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids." ~~See Sections(§§~~24-103-202 (5) and (7) ~~of the State Procurement Code~~ CRS). The Invitation for Bids shall set forth the requirements and criteria which will be used to determine the lowest requirements or criteria that are not disclosed in the Invitation for Bid.

(b) Product Acceptability. The Invitation for Bids shall set forth the evaluation criteria to be used in determining product acceptability. It may require the submission of bid samples, descriptive literature, technical data, or other material. It may also provide for:

(i) inspection or testing of a product prior to award for such characteristics as quality or workmanship;

(ii) examination of such elements as appearance, finish, taste, or feel; or

(iii) other examinations to determine whether it conforms with any other purchase description requirements.

The acceptability evaluation is not conducted for the purpose of determining whether one bidder's item is superior to another, but only to determine that a bidder's offering is acceptable as set forth in the Invitation for Bids. Any bidder's offering which does not meet the acceptability requirements shall be rejected.

(c) Determination of Lowest Bidder. Following determination of product acceptability, if any is required, bids will be evaluated to determine which bidder offers the lowest cost to the State in accordance with the evaluation criteria set forth in the Invitation for Bids. Only objectively measurable criteria which are set forth in the Invitation for Bids shall be applied in determining the lowest bidder.
Examples of such criteria include, but are not limited to, transportation cost, and ownership or life-cycle cost formulae. Evaluation factors need not be precise predictors of actual future cost, but to the extent possible such evaluation factors shall:

(i) be reasonable estimates based upon information the State has available concerning future use; and

(ii) treat all bids equitably.

(d) Restrictions. A contract may not be awarded to a bidder submitting a higher quality item than that designated in the Invitation for Bids, unless such bidder is also the lowest bidder as determined by value analysis or life-cycle cost formulas as permitted in this Section.

(e) Low Tie Bids. Tie bids are low responsive bids from responsible bidders that are identical in price and which meet all the requirements and criteria set forth in the Invitation for Bids. In the discretion of the Director or the head of a purchasing agency, award shall be made in any permissible manner that will discourage tie bids. The office of the Attorney General shall be notified of any tie bids in an amount greater than $1,000.

R-24-103-202b-11 Multi-Step Sealed Bidding.

(a) Definition. Multi-step sealed bidding is a two-phase process consisting of a technical first phase composed of one or more steps in which bidders submit un-priced technical offers to be evaluated by the State, and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase have their price bids considered. It is designed to obtain the benefits of competitive sealed bidding by award of a contract to the lowest responsive, responsible bidder, and at the same time obtain the benefits of the competitive sealed proposals procedure through the solicitation of technical offers and the conduct of discussions to evaluate and determine the acceptability of technical offers.

(b) Conditions for Use. The multi-step sealed bidding method will be used when it is not practical to prepare initially a definitive purchase description which will be suitable to permit an award based on price.

(c) Procedure for Phase One of Multi-Step Sealed Bidding.

(i) Form. Multi-step sealed bidding shall be initiated by the issuance of an Invitation for Bids in the form required by Rule R-24-103-202b-02 (Invitation for Bids), except as hereinafter provided. In addition to the requirements set forth in ~~Section~~ Rule R-24-103-202b-02, the multi-step Invitation for Bids shall state:

(A) that un-priced technical offers are requested;

(B) whether price bids are to be submitted at the same time as un-priced technical offers;
if they are, such price bids shall be submitted in a separate sealed envelope;

(C) that it is a multi-step sealed bid procurement, and priced bids will be considered only in the second phase and only from those bidders whose un-priced technical offers are found acceptable in the first phase;

(D) the criteria to be used in the evaluation of un-priced technical offers;

(E) that the State, to the extent the Procurement Officer finds necessary, may conduct oral or written discussions of the un-priced technical offers;

(F) that bidders may designate those portions of the un-priced technical offers which contain trade secrets or other proprietary data which are to remain confidential; and

(G) that the item being procured shall be furnished generally in accordance with the bidder's technical offer as found to be finally acceptable and shall meet the requirements of the Invitation for Bids.

(ii) Addenda to the Invitation for Bids. After receipt of un-priced technical offers, addenda to the Invitation for Bids shall be distributed only to bidders who submitted un-priced technical offers or to amend those submitted. If, in the opinion of the Procurement Officer, a contemplated addendum will significantly change the nature of the procurement, the Invitation for Bids shall be canceled in accordance with Rule R-24-103-301 (Cancellation of Solicitations; Rejections of Bids or Proposals) of this ~~Chapter~~ Article and a new Invitation for Bids issued.

(iii) Receipt of Handling of Un-priced Technical Offers. Un-priced technical offers shall not be opened publicly but shall be opened in front of two or more procurement officials. Such offers shall not be disclosed to unauthorized persons. Bidders may request non-disclosure of trade secrets and other proprietary data identified in writing.

(iv) Evaluation of Un-Priced Technical Offers. The un-priced technical offers submitted by bidders shall be evaluated solely in accordance with the criteria set forth in the Invitation for Bids. The un-priced technical offers shall be categorized as:

(A) acceptable;

(B) potentially acceptable; that is, reasonably susceptible of being made acceptable; or

(C) unacceptable. The Procurement Officer shall record in writing the basis for finding an offer unacceptable and make it part of the procurement file.

The Procurement Officer may initiate Phase Two of the procedure if, in the Procurement Officer's opinion, there are sufficient acceptable un-priced technical offers to assure effective price competition in the second phase without technical discussions. If the Procurement Officer finds that such is not the case, the Procurement Officer shall issue an amendment to the Invitation for Bids or engage in technical discussions as set forth in ~~S~~sub~~-~~section R-24-103-202b-11~~-~~(c)~~-~~(v) of this ~~Section~~Rule.

~~———~~ (v) Discussion of Un-priced Technical Offers.

Discussion of its technical offer may be conducted by the Procurement Officer with any bidder who submits an acceptable, or potentially acceptable technical offer. During the course of such discussions, the Procurement Officer shall not disclose any information derived from one un-priced technical offer to any other bidder. Once discussions are begun, any bidder who has not been notified that its offer has been finally found unacceptable, may submit supplemental information amending its technical offer at any time until the closing date established by the Procurement Officer. Such submission may be made at the request of the Procurement Officer or upon the bidder's own initiative.

(vi) Notice of Unacceptable Un-priced Technical Offer. When the Procurement Officer determines a bidder's un-priced technical offer to be unacceptable, such bidder shall not be afforded an additional opportunity to supplement technical offers.

(vii) Mistakes During Multi-Step Sealed Bidding. Mistakes may be corrected or bids may be withdrawn during Phase One:

~~———~~(A) before un-priced technical offers are considered;

(B) after any discussions have commenced under ~~Section~~ Rule R-24-103-202b-11(c)(v) (Procedure for Phase One of Multi-Step Sealed Bidding, Discussion of Un-priced Technical Offers); or

(C) when responding to any amendment of the Invitation for Bids. Otherwise mistakes may be corrected or withdrawal permitted in accordance with Rule R-24-103-202b-09 (Mistakes in Bids).

(d) Procedure for Phase Two.

(i) Initiation. Upon the completion of Phase One, the Procurement Officer shall either:

(A) open price bids submitted in Phase One (if price bids were required to be submitted) from bidders whose un-priced technical offers were found to be acceptable; or

(B) if price bids have not been submitted, technical discussions have been held, or amendments to the Invitation for Bids have been issued, invite each acceptable bidder to submit a price bid.

(ii) Conduct. Phase Two shall be conducted as any other competitive sealed bid procurement except:

(A) as specifically set forth in Rule R-24-103-202b-11 (Multi-Step Sealed Bidding)through this ~~Section~~Rule;

(B) no public notice need be given of this invitation to submit price bids because such notice was previously given;

(C) after award the un-priced technical offer of the successful bidder shall be disclosed as follows:

The Procurement Officer shall examine written requests of confidentially for trade secrets and proprietary data in the technical offer of said bidder to determine the validity of any such requests. If the parties do not agree as to the disclosure of data, the Procurement Officer shall inform the bidder in writing what portion of the un-priced technical offer will be disclosed and that, unless the bidder protests under Article 109 (Remedies) of the ~~State~~ Colorado Procurement Code, the offer will be so disclosed. Such technical offer shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data; and

(D) un-priced technical offers of bidder who are not awarded the contract shall not be open to public inspection unless the Director or head of a purchasing agency determines in writing that public inspection of such offers is necessary to assure confidence in the integrity of the procurement process; provided, however, that the provisions of paragraph (C) above shall apply with respect to the possible disclosure of trade secrets and proprietary data.

R-24-103-202.3 COMPETITIVE SEALED BEST VALUE BIDDING

R-24-103-202.3a COMPETITIVE SEALED BEST VALUE BIDDING (other than construction)

R-24-103-202.3a -01 Definitions~~.~~

(a) Base bid means the minimum functional requirements set forth in the bid, as issued by the state.

(b) Enhancements means components, services, or products that exceed the minimum functional requirements and would improve the quality of the goods or services being procured by the state.

(c) Options means choices of additional components, services, or products that would serve to provide increased value to the state beyond the base bid.

(d) Alternatives means a choice of a different commodity or service that meets or exceeds the functional requirements of the base bid.

(e) Best value means the lowest overall cost to the state after taking into consideration costs, benefits, and savings.

R-24-103-202.3a-02 Written Determination.

When best value bidding selection process is to be used, the State Purchasing Director or head of a purchasing agency shall make a written determination that the use of best value bidding is appropriate for the commodity or service being solicited.

R-24-103-202.3a- 03 Award

When the best value bidding process is used, award shall be made to the responsible offeror whose bid results in the best value to the state. The bid, as awarded, must meet the minimum functional requirements in the base bid.

R-24-103-202.3a-04 Evaluation.

Bids shall be evaluated against the minimum functional requirements in the base bid. All bids meeting these specifications shall be determined to be responsive. When a written determination has been made that best value bidding is appropriate for the commodity or service being solicited, the invitation for bids shall expressly allow for enhancements, options, and/or alternatives and shall set forth the objective criteria or formula to be used for evaluation, and the invitation for bid shall require that prices be stated for all options, enhancements, and/or alternatives. The criteria or formula for evaluation must include objective consideration of the costs and savings and/or benefits associated with the enhancements, options, or alternatives. Based on the evaluation of the cost of the base bid, the dollar value of enhancements, options, or alternatives, and the determination of which enhancements, options, or alternatives best meet the needs of the state, an award shall be made to the bidder providing the best value to the state.

R-24-103-202.3b COMPETITIVE SEALED BEST VALUE BIDDING – CONSTRUCTION

R-24-103-202.3b-01 Construction Projects

The use of Competitive Sealed Best Value Bidding shall follow the requirements as used in §24-92-103.5, C.R.S. in construction projects.

R-24-103-202.3b-02 Disclosure

An agency choosing between Ccompetitive Ssealed bidding methods shall disclose the rationale behind its decision in accordance with §24-92-103.7, C.R.S..

R-24-103-202.3b-03 Evaluation

The criteria for construction projects shall be those in §24-92-103.5(3), C.R.S.

R 24-103-202.5-01 Low Tie Bids – Award Procedure and Determination – Bid PreferenceLOW TIE BIDS

(a) The requirements of §24-103-202.5 CRS regarding low tie bids shall be stated in all Invitations for Bids for commodities.

(i) The IFB shall state that any bidder who wishes to be considered a "resident bidder" for purposes of the preference provided in §24-103-202.5 CRS shall include with his/her bid, proof that he/she meets the definition of resident bidder as set forth in either §24-103-101(6)(a) CRS or §24-103-101(6)(b) CRS.

(b) When low tie bids are received in response to an Invitation for Bids for commodities and tie bidders are either both/all resident bidders or both/all non-resident bidders, the State Purchasing Director or the head of a purchasing agency shall follow the procedures set forth in §24-103-202.5 and shall flip a coin or draw straws to determine which bidder receives the award, except when a valid environmentally preferable product preference exists pursuant to §24-103-207.5 CRS. The purchasing preference applies to products and services that have a lesser or reduced adverse effect on human health and the environment than comparable competing products. When the conditions of §24-103-207.5 CRS subsections (3)(a) through (f) have been met, agencies shall award bids for environmentally preferable products or services that cost no more than five percent more than the lowest bid. However, agencies may award the contract to a bidder who offers environmentally preferable products and services which exceed the lowest bid by more than five percent if a cost of ownership life-cycle analysis establishes that long term savings to the state will result. In addition, each purchasing agency must ensure that the purchase can be accommodated within an agency’s existing budget.

(c) Any tie bid for personal services procured through a competitive sealed bid shall be broken by awarding the contract to the bidder utilizing the greatest quantitative (numerical) preference for veterans in hiring offeror's employees.

R-24-103-203 Competitive Sealed Proposals.

Except as noted below, the competitive sealed proposal process shall be the same as the competitive Ssealed Bbid process.

R-24-103-203-01 Definitions.

(a) "Acceptable Proposal" means an offer submitted by any person in response to a Request for Proposals, issued by the State, that is in compliance with the solicitation terms and conditions, and within the requirements of the plans and specifications described and required therein.

(b) "Advantageous" means a judgmental assessment of what is in the State's best interests.

(c) "Practicable" means what may be accomplished or put into practical application; reasonably possible.

(d) "Proposal" means a response, from a vendor, to a Request for Proposals (RFP), also called a "response" or "offer".

(e) "Request for Information (RFI)" is similar to an RFP, but is NOT a source selection method. An RFI is used to obtain preliminary information about a market, type of available service or a product when there is not enough information readily available to write an adequate specification or work statement. An RFI may ask for vendor input to assist the State in preparing a specification or work statement for a subsequent solicitation and may ask for pricing information only with the provision that such information would be submitted voluntarily. The RFI must clearly state that no award will result.

R-24-103-203-02 Written Determinations.

(a) The written determinations required by this ~~section~~ Rule shall be made by the Director or head of a purchasing agency, or a designee of either.

(b) The Director or head of a purchasing agency may make determinations by category of supply, service, or construction item that it is either not practicable or not advantageous to the State to procure specified types of supplies, services, or construction by competitive sealed bidding. Procurements of the specified types of supplies, services or construction may then be made by competitive sealed proposals based upon such determination. The person who made such determination may modify or revoke it at any time, and such determination should be reviewed for current applicability from time to time.

R-24-103-203-03 When Competitive Sealed Bidding Is "Not Practicable"

Competitive sealed bidding is not practicable unless the nature of the procurement permits award to a low bidder who agrees by his or her bid to perform without condition or reservation in accordance with the purchase description, delivery or performance schedule, and all other terms and conditions of the Invitation for Bids. Factors to be considered in determining whether competitive sealed bidding is not practicable include, but are not limited to:

(a) whether the contract needs to be other than a fixed-price type;

(b) whether it may be necessary to conduct oral or written discussions with offerors concerning technical and price aspects of their proposals;

(c) whether it may be necessary to afford offerors the opportunity to revise their proposals;

(d) whether it may be necessary to base an award on a comparative evaluation, as stated in the Request for Proposals, of differing price, quality, and contractual factors in order to determine the most advantageous offering to the State. Quality factors include technical and performance capability and the content of the technical proposal; and

(e) whether the primary considerations in determining award may be factors other than price alone.

R-24-103-203-04 When Competitive Sealed Bidding Is "Not Advantageous".

A determination may be made to use competitive sealed proposals if it is determined that it is not advantageous to the State, even though practicable, to use competitive sealed bidding. Competitive sealed bidding may be practicable, that is reasonably possible, but not necessarily advantageous, that is, in the State's best interest. Factors to be considered in determining whether competitive sealed bidding is not advantageous include:

(a) if prior procurements indicate that competitive sealed proposals may result in more beneficial contracts for the State; and

(b) whether the elements listed in the specifications are desirable rather than necessary in conducting a procurement.

R-24-103-203-05 Dollar Thresholds for, and Content of, Requests for Proposals (RFP's).

(a) Requests for Proposals shall be issued (promulgated) by the Division of Purchasing, or agencies with delegated purchasing authority, for requirements that are estimated to exceed the small purchase threshold, utilizing guidelines established by the Division of Purchasing

(b) Form of Proposal. The manner and format in which proposals are to be submitted, including any forms for that purpose, shall be as set forth in the Request for Proposals.

R-24-103-203-06 Vendor Inquiries

In cases where an RFP raises questions or concerns from vendors, or may require interpretation, all known participating vendors must be given an opportunity to ask questions and to receive answers or clarifications. This may be accomplished by use of a pre-proposal conference, via a formal inquiry period, or a combination of options. If any of these options is anticipated, the RFP shall so state and shall list appropriate dates, times and locations.

Pre-proposal conferences may be mandatory or optional. However, if such meetings result in any material changes to the scope of work or otherwise affect the manner or form of response, all known potential offerors must be notified in writing of any such change.

Similarly, if responses to inquiries result in any material changes to the scope of work or otherwise affect the manner or form of response, all known potential offerors must be notified in writing of any such change.

When such written notice is given, offerors must be afforded a reasonable amount of time to review these materials, to contemplate any consequences and to consider the content for inclusion in their offers.

R-24-103-203-07 Proposal Preparation Time.

Proposal preparation time for formal RFPs shall be set to provide offerors a minimum of 30 calendar days to prepare and submit their proposals.

However, when special requirements or conditions exist, the State Purchasing Director or head of a purchasing agency may shorten this time, but in no case shall the time be shortened in order to reduce competition. The State Purchasing Director or head of a purchasing agency shall document why the reduced time period was necessary.

R-24-103-203-08 Opening and Recording of Proposals.

Proposals shall be opened publicly and a register of proposals shall be prepared which shall include the name of each offeror.

R-24-103-203-09 Evaluation of Proposals.

Evaluation Factors in the Request for Proposals. The Request for Proposals shall state all of the evaluation factors, including price. The evaluation shall be based on the evaluation factors set forth in the Request for Proposals. Numerical rating systems may be used. Factors not specified in the Request for Proposals shall not be considered.

(a) Veterans' Preference. The relative weight assigned to a criterion, as to the extent and quality of any preference for veterans of military service given by offeror in the hiring of offeror's employees, shall not exceed 5%.

(b) Minority Business Enterprises.

(i) When a competitive sealed proposal process is conducted for commodities or services, and past discrimination against minority businesses can be shown, the RFP shall contain an evaluation criterion, in addition to price and other appropriate criteria, evaluating the extent of MBE participation offered in the proposal. Disparity or predicate studies accepted by other public entities may be used as evidence establishing past discrimination in the geographical area of the study for the goods or services involved.

(ii) The goal established in each procurement for MBE participation, against which the extent of participation shall be measured, and the weight assigned to the criterion which considers the extent of offeror's MBE participation, shall be determined on a case-by-case basis, but in no event shall the weight assigned to such criterion exceed the lesser of a goal established as a result of the disparity study relied upon as evidence of past discrimination, or the 17% goal established by the Governor's Executive Order D005587.

(iii) In establishing the goal, and the weight of the criterion which considers such goal, consideration shall be given to:

(A) the extent to which subcontracting, or the use of suppliers, is permitted by the RFP or is possible in the response to the RFP; and

(B) the extent to which Minority Business enterprises exist in the particular marketplace and industry to provide the specific goods or services sought by the State in the RFP; and

(C) the extent to which the procuring agency is exceeding, on an annual aggregate basis, the goals of the Executive Order at the time the RFP is prepared.

(c) Women's Business Enterprises.

(i) When a competitive sealed proposal process is conducted for commodities or services, and past discrimination against women's businesses can be shown, the RFP shall contain an evaluation criterion, in addition to price and other appropriate criteria, evaluating the extent of WBE participation offered in the proposal. Disparity or predicate studies accepted by other public entities may be used as evidence establishing past discrimination in the geographical area of the study for the goods or services involved.

(ii) The goal for WBE participation established in each procurement against which the extent of participation shall be measured, and the weight assigned to the criterion that considers the extent of offeror's WBE participation, shall be determined on a case by case basis, but in no event shall such criterion exceed the goal established as a result of the disparity findings relied upon as directed by the Governor's Executive Order D0005-94.

(iii) In establishing the goal, and the weight of the criterion that considers such goal, consideration shall be given to:

(A) the extent to which subcontracting, or the use of suppliers, is permitted by the RFP or is possible in the response to the RFP; and

(B) the extent to which Women's Business Enterprises exist in the particular marketplace and industry to provide the specific goods or services sought by the State in the RFP; and

(C) the extent to which actual WBE participation in the agency's contracts, resulting from RFPs, issued during the current year have exceeded the goals set in those same RFPs, on an aggregate basis.

(d) Tie bids. In all solicitations for personal services, by competitive sealed proposal, any tie between offerors shall be broken by awarding the contract to the offeror utilizing the greatest quantitative (numerical) preference for veterans in hiring offeror's employees.

(e) Classifying Proposals. for the purpose of conducting discussion with offerors, proposals shall be initially classified as:

(i) acceptable;

(ii) potentially acceptable, that is, reasonable susceptible of being made acceptable; or

(iii) unacceptable.

R-24-103-203-10 Proposal Discussion with Individual Offerors after Opening.

Purpose of Discussion. Discussions may be held to:

(a) promote understanding of the State's requirements and the offeror's proposals; and

(b) facilitate arriving at a contract that will be most advantageous to the State taking into consideration price and the other evaluation factors set forth in the Request for Proposals.

(c) Conduct and Purpose of Discussion. Offerors shall be accorded fair and equal treatment in discussion and revision of their proposals. After RFP's have been opened, discussions may be held with those offerors determined to be most responsive. Discussions may be held to clarify requirements and to make adjustments in services to be performed and in costs and/or prices. Auction techniques and/or disclosure of any information derived from competing proposals are prohibited.
Any changes to the proposal, technical or costs, shall be submitted/confirmed in writing by the contractor(s).

R-24-103-203-11 Award~~.~~

Awards shall be made to the responsible offeror whose proposal is determined to be most advantageous to the State based on the evaluation factors set forth in the Request for Proposals. The evaluation committee established to evaluate offers shall make such determination subject to final approval by the ~~Director or~~ head of a purchasing agency or delegate.

R-24-103-204 Small Purchases~~.~~

Small purchases are goods and services purchases costing less than $150,000 and construction projects costing less than $150,000. Small purchases may be procured in accordance with the dollar limits ~~and procedures~~ established by this rule. Procurements shall not be artificially divided so as to constitute small purchases under this ~~section~~Rule. Small purchases are subject to the requirement that prices paid be fair and reasonable. (§24-30-202(2) CRS)

~~(a) Effective upon the State Purchasing Director's order, small purchases over $1000 must be reported to the Division of Purchasing according to a schedule and by one or more mechanisms acceptable to the State Purchasing Director. Reports must include the following information:~~

~~(i) dollar amount~~

~~(ii) category of commodity or service, in accordance with categories defined in the bids system~~

~~(iii) name and FEIN of the vendor from whom the purchase was made~~

~~(iv) gender and ethnicity of the vendor from whom the purchase was made~~

~~(b) Procurements advertised and posted on BIDS need not be reported separately, if the full award information is properly reported on BIDS.~~

R-24-103-204-01 Purchase Orders.

The use of Purchase Orders is governed by the State Fiscal Rules.

R-24-103-204-02 Competition Not Required.

(a) Non-delegated Agencies. Agencies that have not been delegated purchasing authority may purchase supplies or services up to a limit of $15,000 without benefit of competition. Items on a mandatory price agreement issued by the Division of Purchasing must be secured from the appropriate vendor.

(b) Group I and Group II Agencies. Group I and Group II agencies may secure supplies up to a limit of $10,000 and services up to $25,000 without benefit of competition. Items on a mandatory price agreement issued by the Division of Purchasing must be secured from the appropriate vendor.

(c) All agencies shall maximize the opportunity for minority-owned and women-owned business enterprises to receive orders that are issued when bids are not required.

(d) The person doing the acquisition shall use professional judgment to ensure that the State is receiving maximum value. This rule does not preclude the option to place the solicitation on an Electronic Procurement System.~~BIDS.~~

(e) All agencies may procure construction up to $25,000 without benefit of competition.

If abuses to this rule are discovered, the Director or head of a purchasing agency may revoke the purchasing authority.

R 24-103-204-03 Documented Quotes

(a) Goods costing between $10,000 and $150,000, services not defined in §24-30-1402 CRS costing between $25,000 and $150,000 and construction projects between $25,000 and $150,000 may be purchased using a documented quote process.

(b) For goods and services procurements, neither the solicitation nor the vendor's response constitutes an "offer"; therefore, "responsiveness" at the time of receipt is not an absolute criterion. The purchasing authority may determine whether or not a response is acceptable and may compare the relative value of competing responses, not solely the price. "Acceptable," for purposes of this paragraph and paragraphs (d)~~four~~ and (f)~~six~~ below, means that the product or service will meet the state's needs and that the price is fair and reasonable. The purchase order/commitment voucher constitutes an offer. The vendor may accept by performance, unless the purchase order/commitment voucher expressly requires acceptance by written acknowledgment.

(c) For construction projects, the contractor's response constitutes an "offer" and is binding if accepted by the state.

(d) The choice of vendor for goods and services must be based on which acceptable response is most advantageous to the state, price/cost being the primary consideration. The basis for the selection must be documented and will be final and conclusive unless determined to be arbitrary, capricious, or contrary to law. For construction projects, the award must be made to the low acceptable quote, except when the award is for products only that are for inclusion in construction projects and the products are specifically identified and a valid environmentally preferable product preference exists pursuant to §24-103-207.5 CRS. The provisions of §24-103-207.5 CRS which require a preference for environmentally preferable products apply to the award of contracts under this section. The purchasing preference applies to products and services that have a lesser or reduced adverse effect on human health and the environment than comparable competing products. When the conditions of §24-103-207.5 CRS subsections (3)(a) through (f) have been met, agencies shall award bids for environmentally preferable products or services that cost no more than five percent more than the lowest bid. However, agencies may award the contract to a bidder who offers environmentally preferable products and services which exceed the lowest bid by more than five percent if a cost of ownership life-cycle analysis establishes that long term savings to the state will result. In addition, each purchasing agency must ensure that the purchase can be accommodated within an agency's existing budget.

(e) Requests for documented quotes must be placed on an Electronic Procurement System~~BIDS~~ in accordance with Rules R24-102-202.5-02 and -04. Solicitations must remain posted for at least three working days unless the director or head of a purchasing agency determines in writing that a lesser time is required in order to meet an immediate state need.

(f) The purchasing official may negotiate with any vendor or contractor to clarify its quote or to effect modifications that will: make the quote acceptable (including curing a defective bid bond) or make the quote more advantageous to the state. However, in the negotiation process, the terms of one vendor's quote shall not be revealed to a competing vendor, and quotes may be kept confidential until a commitment voucher is issued.

(g) Procurement of services greater than $10,000 must be reviewed by the delegated purchasing official for a determination that prices or rates are fair and reasonable.

(h) Agencies ~~may~~, with the approval of the Office of the State Architect~~State Buildings Program~~, may utilize a Standing Order Process for projects less than $150,000. An approved process must include open public solicitation (including advertising on an Electronic Procurement System~~BIDS~~) for eligible contractors at least once per year, a process for obtaining at least three quotes before awarding a contract to an eligible contractor, and an equitable process for determining which contractors will be given an opportunity to provide quotes.

(i) Bonding and retainage requirements set forth in §38-26-106 CRS, §24-105-201 et seq. CRS, and §24-91-103(1) CRS and rules promulgated

thereunder are not affected by this ~~r~~Rule. Failure to provide a bid bond if required but not cured makes the quote unacceptable. Agencies should seek legal advice when bid bonds have been required and the terms of the quote are modified after receipt.

R-24-103-205-01 Sole Source Procurements~~.~~

(a) Conditions for Use. A sole source procurement is justified when there is only one good or service that can reasonably meet the need and there is only one vendor who can provide the good or service. A requirement for a particular proprietary item (i.e., a brand name specification) does not justify a sole source procurement if there is more than one potential bidder or offeror for that item. The following are examples of circumstances which could justify a sole source procurement:

(i) where the compatibility of equipment, accessories, or replacement parts is the paramount consideration;

(ii) where a sole supplier's item is needed for trial use or testing;

(iii) where public utility services are to be procured.

The Director, the head of a purchasing agency, or the designee of such person, shall make a written determination that a procurement is sole source, setting forth the reasons. In cases of reasonable doubt, competition should be solicited. Any request by a using agency that a procurement be restricted to one potential contractor shall be accompanied by an explanation as to why no other will be suitable or acceptable to meet the need.

(b) Exemptions. Sole source determinations are not required under circumstances outlined in §24-101-105, C~~.~~R~~.~~S~~.~~, as amended, and related rules.

R-24-103-205-02 Negotiation~~.~~

When a sole source procurement is authorized, the Procurement Officer shall conduct negotiations, as appropriate, as to price, delivery, and terms.

R-24-103-206 ~~EMERGENCY~~ Emergency Procurements~~PROCUREMENTS.~~

R-24-103-206-01 Definition of Emergency Conditions~~.~~

An emergency condition is a situation which creates a threat to public health, welfare, or safety such as may arise by reason of floods, epidemics, riots, equipment failures, or such other reason as may be proclaimed by the using agency and approved by the director, head of a purchasing agency, or designee. ~~ In the event that and the Office of the State Architect for~~ emergency controlled maintenance funding is to be requested, the Office of the State Architect shall also be notified by the next working day. The existence of such condition creates an immediate and serious need for supplies, services, or construction that cannot be met

through normal procurement methods and the lack of which would seriously threaten:

(a) the functioning of state government, or its programs;

(b) the preservation or protection of property; or

(c) the health or safety of any person or persons.

R-24-103-206-02 Scope of Emergency Procurements.

Emergency procurements shall be limited only to a quantity of those supplies, services, or construction items necessary to meet the emergency.

R-24-103-206-03 Authority to Make Emergency Procurements.

Any state agency may make emergency procurements when an emergency condition arises and the need cannot be met through normal procurement methods, provided that whenever practical, approval by the Director, or head of a purchasing agency, ~~and the Office of the State Architect for emergency controlled maintenance funding,~~ shall be obtained prior to the procurement. In the event an emergency arises after normal working hours, the state agency shall notify the Director, or head of a purchasing agency, ~~and the Office of the State Architect for emergency controlled maintenance funding,~~ on the next working day. In the event that emergency controlled maintenance funding is to be requested, the Office of the State Architect shall also be notified by the next working day.

R-24-103-206-04 Source Selection Methods~~.~~

(a) General. The procedure used shall be selected to assure that the required supplies, services, or construction items are procured in time to meet the emergency. Given this constraint, such competition as is practicable shall be obtained.

~~(a)~~(b) Determination Required. The Procurement Officer or the agency official responsible for procurement shall make a written determination stating the basis for an emergency procurement and for the selection of the particular contractor. Such determination shall be sent promptly to the director.

R-24-103-208-01 Competitive Reverse Auctions

Contracts for goods and services may be awarded by competitive reverse auctions if the director or head of a purchasing agency determines that adequate competition can be achieved and that the process is likely to result in better pricing.

Competitive reverse auction means a ~~computer aided~~ bidding process through which a pre-established group of vendors may post bids for a defined period of time and may change their bids as desired during the bidding period.

(a) The intent to conduct a competitive reverse auction shall be published on ~~the BIDS~~an Electronic Procurement ~~s~~System for a period of not less than 14 days. ~~The BIDS~~An Electronic Procurement System notice shall include all terms, conditions, and specifications and shall tell interested vendors how to participate in the process. If the director or head of a purchasing agency believes that ~~BIDS~~an Electronic Procurement System is not likely to yield adequate competition, the agency may notify potential vendors through additional methods~~.; however, vendors must register for BIDS prior to the auction process to be eligible to participate.~~

(b) All responsible vendors willing to accept the terms and conditions of the procurement and to meet the specifications of the bid shall be eligible to participate. The purchasing agency may conduct a preliminary process to determine vendor responsibility and to ensure the vendor's responsiveness to terms and specifications.

(c) During the bidding process, the participating vendors shall be identified only by a letter, number, or other symbol to protect their identities; each bid price and the letter, number, or symbol designation of the vendor shall be ~~posted~~made available for all bidding vendors immediately upon receipt.

(d) The contract shall be awarded to the low responsible bidder whose bid meets the requirements and specifications.

R-24-103-208-02 Competitive Negotiation

Contracts may be awarded by competitive negotiation.

(a) If the director or head of a purchasing agency determines that time does not permit resolicitation, a contract may be awarded by competitive negotiation after an unsuccessful competitive sealed bid or competitive sealed proposal process.

(b) A competitive sealed bid or competitive sealed proposal process is unsuccessful if (1) all offers received are unreasonable or uncompetitive, (2) the low bid exceeds available funds, as certified in writing by the appropriate fiscal officer, (3) the solicitation has been properly cancelled in accordance with the provisions of §24-103-301 CRS or §24-109-401 and –402 CRS, or (4) the number of responsive offers is not adequate to ensure adequate price competition.

(c) The competitive negotiation process shall include all vendors who responded to the solicitation or any rebid and may include other vendors capable of fulfilling the state's needs.

(d) The purchasing agency may set reasonable times and locations for participation in the competitive negotiation, reflecting the fact that time constraints are the basis for the competitive negotiation process.

(e) Each vendor with whom the purchasing agency negotiates shall be given a fair and equal chance to compete. Negotiations shall be conducted separately and independently with each vendor, and in no case shall the

terms of any vendor’s offer be communicated to any other vendor until an intent to award notice has been issued. Any change in requirements shall be communicated to all vendors.

(f) A vendor may be eliminated from the process upon a determination that its offer is not reasonably susceptible of being selected for award.

(g) The award shall be made to the vendor whose offer is most advantageous to the state. The director or head of a purchasing agency shall make a written determination that identifies the nature of the discussions with each vendor and that states why the selected offer is the most advantageous to the state.

PART 3 CANCELLATION OF SOLICITATIONS: REJECTION OF BIDS OR PROPOSALS

R-24-103-301 Cancellation of Invitations for Bids or Requests for Proposals.

R-24-103-301-01 Scope of This Rule

The provisions of this rule shall govern the cancellation of any solicitations whether issued by the state under competitive sealed bidding, competitive sealed proposals, small purchases, or any other source selection method, and rejection of bids or proposals in whole or in part, whether rejected for being non-responsive or non-responsible.

R-24-103-301-02 Policy

Solicitations should only be issued when there is a valid procurement need. Solicitations should not be issued to obtain estimates or to "test the water." A solicitation is to be cancelled only when there are cogent and compelling reasons to believe that the cancellation of the solicitation is in the state's best interest.

R-24-103-301-03 Cancellation of Solicitation; Notice

Each solicitation issued by the State shall contain language stating that the solicitations may be cancelled as provided in this rule.

R-24-103-301-04 Cancellation of Solicitation: Rejection of all Bids or Proposals

(a) Prior to Opening. Prior to opening of bids, a solicitation may be cancelled in whole or in part when the Director, or the head of a purchasing agency, determines in writing that such action is in the state's best interest for reasons including but not limited to:

(i) the state no longer requires the supplies, services, or construction.

(ii) the state no longer can reasonably expect to fund the procurement; or

(iii) proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable.

(b) Notice. When a solicitation is cancelled prior to opening, notice of cancellation shall be sent to all businesses solicited. The notice of cancellation shall:

(i) identify the solicitation;

(ii) explain the reason for cancellation; and

(iii) where appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future procurements of similar supplies, services, or construction.

(c) After Opening. After opening but prior to award, any or all bids or proposals may be rejected in whole or in part when the Director or the head of a purchasing agency, determines in writing that such action is in the state's best interest for reasons including but not limited to:

(i) the supplies, services, or construction being procured are no longer required;

(ii) ambiguous or otherwise inadequate specifications were part of the solicitation;

(iii) the solicitation did not provide for consideration of all factors of significance to the state;

(iv) prices exceed available funds and it would not be appropriate to adjust quantities or qualities to come within available funds;

(v) all otherwise acceptable bids or proposals received are at clearly unreasonable prices; or

(vi) there is reason to believe that the bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith.

A notice of rejection should be sent to all businesses that submitted bids or proposals.

(d) Documentation. The reasons for cancellation or rejection shall be made a part of the procurement file and shall be available for public inspection.

(e) Disposition of Bids or Proposals. When bids or proposals are rejected, or a solicitation cancelled after bids or proposals are received, the bids or proposals which have been opened shall be retained in the procurement file, or if unopened, returned to the bidders or offerors upon request, or otherwise disposed of.

PART 4 QUALIFICATIONS AND DUTIES

R-24-103-401 Responsibility of Bidders and Offerors

R-24-103-401-01 Application

A determination of responsibility or non-responsibility shall be governed by this Rule.

R-24-103-401-02 Standards of Responsibility

(a) Standards. Factors to be considered in determining whether the standard of responsibility has been met include whether a prospective contractor or vendor has:

(i) available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them necessary to indicate the capability to meet all contractual requirements;

(ii) a satisfactory record of performance;

(iii) a satisfactory record of integrity;

(iv) qualified legally to contract with the State; and

(v) supplied all necessary information in connection with the inquiry concerning responsibility.

(b) Information Pertaining to Responsibility. The prospective contractor shall supply information requested by the Procurement Officer concerning the responsibility of such contractor. If such contractor fails to supply the requested information, the Procurement Officer shall base the determination of responsibility upon any available information or may find the prospective contractor non-responsible if such failure is unreasonable.

R-24-103-401-03 Ability to Meet Standards

The prospective contractor or vendor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:

(a) evidence that such contractor possesses such necessary items;

(b) acceptable plans to subcontract for such necessary items; or

(c) a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

R-24-103-401-04 Written Determination of Non-responsibility Required

If a bidder or offeror who otherwise would have been awarded a contract is found non-responsible, a written determination of non-responsibility setting forth the basis of the finding shall be prepared by the Director or head of a purchasing agency. A copy of the determination shall be sent promptly to the non-responsible bidder or offeror. The final determination shall be made part of the procurement file.

R-24-103-402 Prequalification of Suppliers

R-24-103-402-01 Requirements.

~~(a) State construction projects of $150,000 or more, and under the supervision of the State Buildings Section, Department of Personnel, require the Contractor to be qualified with that Section. Projects under $150,000 do not normally require pre-qualification. A contractor, to be qualified with the Colorado State Buildings Section, must annually file State Form SC-9.1, "Contractor's Statement of Experience," and be qualified at least two (2) calendar days prior to the date fixed for publicly opening sealed bids. This form can be obtained by writing the Director, State Buildings Section. Filing instructions are detailed in the form under instructions. The state buildings section will pre-qualify only one entity owned by or controlled by a corporation, an individual, a joint venture or partnership. Under no circumstances will two or more entities owned or controlled by a single corporation, individual, partnership or joint venture submit bids for the same contract. The fact that a prospective contractor has been pre-qualified does not necessarily represent a finding of responsibility.~~

(a) The Director, or head of a purchasing agency, may develop ~~additional~~ pre-qualification procedures for specific solicitations.

(b) Colorado Labor shall be employed on a Public Works Project unless a waiver is allowed pursuant to ~~Section~~§ 8-17-101, C.R.S.

R-24-103-403 Cost or Pricing Data.

R-24-103-403-01 Definitions.

(a) Cost Data is factual information concerning the cost of labor, material, overhead, and other cost elements which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.

(b) Price Data is factual information concerning prices for supplies, services, or construction substantially identical to those being procured. Prices in this definition refer to offered or proposed selling prices, historical selling prices, and current selling prices of such items. The definition refers to data relevant to both prime and subcontract prices.

R-24-103-403-02 Requirement for Cost or Pricing Data.

Cost or pricing data is required to be submitted in support of a proposal when:

(a) adjusting the price of any contract, including a contract awarded by competitive sealed bidding, whether or not cost or pricing data were required in connection with the initial pricing of the contract, if the adjustment involves aggregate increases and/or decreases in costs plus applicable profits expected to exceed $500. However, this requirement shall not apply when unrelated and separately priced adjustments for which

cost or pricing data would not be required if considered separately are consolidated for administrative convenience;

(b) an emergency procurement is made in excess of $25,000, but such data may be submitted after contract award; or

(c) the procurement officer makes a written determination that the circumstances warrant requiring submission of cost or pricing data provided, however, cost or pricing data shall not be required where the contract award is made pursuant to competitive sealed bidding.

R-24-103-403-03 Submission of Cost or Pricing Data and Certification.

(a) Time and Manner. When cost or pricing data are required, they shall be submitted to the procurement officer prior to beginning price negotiations at any reasonable time and in any reasonable manner prescribed by the procurement officer. When the procurement officer requires the offeror or contractor to submit cost or pricing data in support of any proposal, such data shall be either actually submitted or specifically identified in writing.

(b) Obligation to Keep Data Current. The offeror or contractor is required to keep such submission current until the negotiations are concluded.

(c) Time for Certification. The offeror or contractor shall certify as soon as practicable after agreement is reached on price that the cost or pricing data submitted are accurate, complete, and current as of a mutually determined date prior to reaching agreement.

(d) Refusal to Submit Data. A refusal by the offeror to supply the required data shall be referred to the Director or the head of a purchasing agency, whose duty shall be to determine, in writing, whether to disqualify the non-complying offeror, to defer award pending further investigation, or to enter into the contract. A refusal by a contractor to submit the required data to support a price adjustment shall be referred to the Director or the head of a purchasing agency who shall determine, in writing, whether to further investigate the price adjustment, not to allow any price adjustment, or to set the amount of the adjustment, subject to the contractor's rights under Article 109 (Remedies) of the Colorado Procurement Code.

(e) Exceptions. Cost and pricing data need not be submitted and certified:

(i) where the contract price is based on:

(A) adequate price competition;

(B) established catalogue prices or market prices;

(ii) when the Director or the head of a purchasing agency determines in writing to waive the applicable requirement for submission of cost or pricing data under the Sub-section R-24-103-403-02(a) or (b) of this ~~Section~~ Rule in a particular pricing action and the reasons for such waiver are stated in the determination. A copy of such determination shall

be kept in the contract file and made available to the public upon request.

If, after cost or pricing data were initially requested and received, it is determined that adequate price competition does exist, the data need not be certified.

R-24-103-403-04 Meaning of Terms "Adequate Price Competition," "Established Catalogue Prices or Market Prices," and "Prices Set by Law or Regulation".

(a) Application. As used in the exceptions set forth in Rule R-24-103-403-03(e) (Cost or Price Data, Exceptions) the terms "adequate price competition," "established catalogue prices or market prices," and "prices set by law or regulations" shall be construed in accordance with the following definitions.

(b) Adequate Price Competition. Price competition exists if competitive sealed proposals are solicited and at least two responsible offerors independently compete for a contract to be awarded to the responsible offeror submitting the lowest evaluated price by submitting priced offers (or best and final offers) meeting the requirements of the solicitation. If the foregoing conditions are met, price competition shall be presumed to be "adequate" unless the procurement officer determines in writing that such competition is not adequate.

(c) Established Catalogue Prices or Market Prices.

(i) See Article 103, Part 1 (Definitions, Established Catalogue Price) of the Colorado Procurement Code for the definition of established catalogue price.

(ii) "Established Market Price" means a current price, established in the usual and ordinary course of trade between buyers and sellers, which can be substantiated from sources which are independent of the manufacturer or supplier and may be an indication of the reasonableness of price.

(iii) If, despite the existence of an established catalogue price or market price, and after consultation with the prospective contractors, the procurement officer considers that such price is not reasonable, cost or pricing data may be requested. Where the reasonableness of the price can be assured by a request for cost or pricing data limited to data pertaining to the differences in the item or services being procured and those in the catalogue or market, requests should be so limited.

(d) Prices Set by Law or Regulation. The price of a supply or service is set by law or regulation if some governmental body establishes the price that the offeror or contractor may charge the State and other customers.

R-24-103-403-05 Defective Cost or Pricing Data.

(a) Overstated Cost or Pricing Data. If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or non-current as of the date stated in the certificate, the State is entitled to an

adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee was increased because of the defective data. Judgmental errors made in good faith concerning the estimated portions of future costs or projections do not constitute defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data were not used or relied upon, the price should be reduced in such amount. In establishing that the defective data caused an increase in the contract price, the procurement officer is not expected to reconstruct the negotiation by speculating as to what would have been the mental attitudes of the negotiating parties if the correct data had been submitted at the time of agreement on price.

(b) Offsetting Understated Cost or Pricing Data. In determining the amount of a downward adjustment, the contractor shall be entitled to an offsetting adjustment for any understated cost or pricing data submitted in support of price negotiations for the same pricing action up to the amount of the State's claim for overstated cost or pricing data arising out of the same pricing action.

(c) Dispute as to Amount. If the contractor and the procurement officer cannot agree as to the amount of adjustment due to defective cost or pricing data, the procurement officer shall set an amount in accordance with Sub-sections (a) and (b) of this Section and the contractor may appeal this decision under Article 109 (Remedies) of the State of Colorado Procurement Code.

PART 5 TYPES OF CONTRACTS

R-24-103-501 Types of Contracts.

(See Statute)

The minimum requirements for contract formation and content are contained in Chapter 3 of the Colorado Fiscal Rules.

R-24-103-502 Approval of Accounting System.

(See Statute)

R-24-103-503 Multi-Year Contracts

The Division of Purchasing or agencies with delegated purchasing authority may enter into multi-year contracts for supplies or services subject to funding availability. Contracts for periods in excess of five years shall not be executed without written permission of the State Purchasing Director.

Specifications for multi-year contracts shall contain conditions of renewal or extension, if any. Methods used to determine any price escalation/de-escalation shall be part of the original specifications and made a part of the contract. Contracts shall only be renewed or extended if funds are available for the new contract period.

PART 6 AUDIT OF RECORDS

(See Statute)

PART 7 DETERMINATIONS AND REPORTS

(See Statutes)

ARTICLE 104 SPECIFICATIONS

PART 1 DEFINITIONS

R-24-104-101 ~~DEFINITIONS~~Definitions~~.~~

R-24-104-101-01 Terms Defined in this ~~Chapter~~Article~~.~~

(a) Brand Name Specification: Means a specification limited to one or more items by manufacturer's names or catalogue numbers.

(b) Brand Name or Equal Specification: Means a specification which uses one or more manufacturer's names or catalogue numbers to describe the standard of quality, performance, and other characteristics needed to meet state requirements, and which provides for the submission of equivalent products.

(c) Qualified Products List: Means an approved list of supplies, services or construction items described by model or catalogue numbers, which prior to competitive solicitation, the state has determined will meet the applicable specification requirements.

(d) Specifications: See Statute; includes performance characteristics.

PART 2 SPECIFICATIONS

R-24-104-201 Duties of the Executive Director

R-24-104-201-01 General Purpose and Policies

(a) Purpose. The purpose of a specification is to serve as a basis for obtaining a supply, service, or construction item adequate and suitable for the State's needs in a cost effective manner, taking into account, to the extent practicable, the costs of ownership and operation as well as initial acquisition costs, i.e., value analysis. It is the policy of the State that specifications permit maximum practicable competition consistent with this purpose. Specifications shall be drafted with the objective of clearly describing the State's requirements.

(b) Use of Functional or Performance Descriptions. Specifications shall, to the extent practicable, emphasize functional or performance criteria while limiting design or other detailed physical descriptions to those necessary to meet the needs of the State. To facilitate the use of such

criteria, using agencies shall endeavor to include as part of their purchase requisitions the principal functional or performance needs to be met. It is recognized, however, that the preference for use of functional or performance specifications is primarily applicable to the procurement of supplies and services. Such preference is often not practicable in construction, apart from the procurement of supply type items for a construction project.

(c) Preference for Commercially Available Products. It is the general policy of this State to procure standard commercial products whenever practicable. In developing specifications, accepted commercial standards shall be used and unique requirements shall be avoided, to the extent practicable.

R-24-104-202 Brand Name or Equal Specification: Conditions for Use

Brand name or equal specifications may be used when it is in the best interest of the State and when the item to be procured is best described by use of such a specification. Brand name or equal specifications shall seek to designate three or as many different brands as are practicable as "or equal" references and shall further state that substantially equivalent products to those designated will be considered for award. Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not to limit or restrict competition.

R-24-104-202-01 Brand Name Specifications: Conditions for Use

Since use of a brand name specification is restrictive, it may be used when only the brand name or items will satisfy the State's needs. The procurement officer shall seek to identify sources from which the designated brand name or item can be obtained and shall solicit such sources to achieve whatever degree of competition is practicable. If only one source can supply the requirement, the procurement shall be made under Rule R-24-103-205 (Sole Source Procurement).

R-24-104-202-02 Qualified Products List: Conditions for Use

A qualified products list may be developed with the approval of the Director or the head of a purchasing agency when testing or examination of the supplies or construction items prior to issuance of the solicitation is desirable or necessary in order to best satisfy the State's requirements. When developing a qualified products list, a representative group of potential suppliers may be solicited in writing to submit products for testing and examination to determine acceptability for inclusion on a qualified products list. Any potential supplier, even though not solicited, may offer its products for consideration on subsequent solicitations.

R-24-104-203 Exempted Items

(See Statute)

R-24-104-204 Relationship With Using Agencies.

(See Statute)

R-24-104-205 Maximum Practicable Competition.

(See Statute)

R-24-104-206 Ownership Considerations.

(See Statute)

ARTICLE 105 CONSTRUCTION CONTRACTS

PART 1 MANAGEMENT OF CONSTRUCTION CONTRACTING

R-24-105-101 Responsibility for Selection of Methods of Construction Contracting Management.

R-24-105-101-01 Definitions

(a) Prime Contractor, as used in this article means a person who has a contract with the state to build, alter, repair, improve, or demolish any public structure or building, or other public improvements of any kind to any public real property.

R-24-105-101-02 General Definitions

(a) Use of Definitions. The following definitions are to provide a common vocabulary for use in the context of this Rule and for general discussion concerning the construction contracting activities of the state. The methods described are not all mutually exclusive and often may be combined on one project. These definitions are not intended to be fixed in respect to all construction projects of the state. In each project these definitions may be adapted to fit the circumstances of that project. However, the procurement officer should endeavor to ensure that these terms are defined adequately in the appropriate contracts, are not used in a misleading manner, and are understood by all relevant parties. Significant deviations from the definitions provided in this Rule should be explicitly noted.

(b) Single Prime Contractor. The single prime contractor method of contracting is typified by one business (general contractor) contracting with the state to timely complete an entire construction project in accordance with plans and specifications provided by the state. Often these plans and specifications are prepared by a private architectural firm under contract to the state. Further, while the general contractor may take responsibility for successful completion of the project, much of the work may be performed by specialty contractors with whom the prime contractor has entered into subcontracts.

~~(c) Multiple Prime Contractors. Under the multiple prime contractor method, the state or the state's agent contracts directly with a number of~~

~~specialty contractors to complete portions of the project in accordance with state plans and specifications. The state or its agent may have primary responsibility for successful completion of the entire project, or the contracts may provide that one of the multiple prime contractors has this responsibility.~~

(~~d~~c) Design-Build or Turnkey. In design-build or turnkey project, a business contracts directly with the state to meet the state's requirements as described in a set of performance specifications by constructing a facility to its own plans and specifications. Design responsibility and construction responsibility both rest with the design-build contractor. This method can include instances where the design-build contractor supplies the site as part of the package.

(~~e~~d) Construction Manager/General Contractor. Construction management is a team approach to construction. A construction manager/general contractor is a firm or individual experienced in construction that has the ability to evaluate and to implement plans and specifications as they affect time, cost, and quality of construction and the ability to coordinate the design (consisting of architect/engineers and other consultants as may be required as team members) and contracts directly with sub-contractors for performance of the construction of the project, including the administration of change orders. ~~The state contracts with a qualified construction manager to act for the state in the construction project as specified in the construction management contract.~~

~~(f) Sequential Design and Construction. Sequential design and construction denotes a method in which design of substantially the entire structure is completed prior to beginning the construction process.~~

(~~g~~e) Phased Design and Construction. Phased design and construction denotes a method in which construction is begun when appropriate portions have been designed, but before substantial design of the entire structure has been completed. This method is also known as fast-track construction.

The above defined methods of construction contracting are not to be construed as an exclusive list. In selecting the appropriate construction contracting method, consideration will be given to all appropriate and effective methods and their comparative advantages and disadvantages and how they might be adapted or combined to fulfill state requirements.

PART 2 BONDS

R-24-105-201 Bid Security

R-24-105-201-01 General

(See Statute)

R-24-105-201-02 Acceptable Bid Security.

Acceptable bid security shall be limited to:

(a) a one-time bid bond underwritten by a company licensed to issue bid bonds in the State of Colorado, and in the form prescribed in Section 24-105-203 CRS ~~of the Colorado Procurement Code~~ and Rule R-24-105-203; or

(b) a bank cashier's check made payable to the Treasurer of the State of Colorado; or

(c) a bank certified check made payable to the Treasurer of the State of Colorado.

The bid security is submitted as a guarantee that the bid will be maintained in full force and effect for a period of thirty (30) days after the opening of the bids or as specified in the Invitation for Bids.

R-24-105-202 Contract Performance and Payment Bonds~~.~~

R-24-105-202-01 Performance Bonds

(See Statute)

R-24-105-202-02 Payment Bonds

(See Statute)

R-24-105-202-03 Exceptions

If it is deemed to be in the State's best interest, the procurement officer may require, as provided in §24-105-202(2)~~,~~ CRS, a performance bond or other security in addition to those bonds or in circumstances other than those specified in ~~Section~~ §24-105-202(a), (b)~~,~~ CRS, as amended.

R-24-105-203 Bond Forms and Copies~~.~~

R-24-105-203-01 Forms

All construction contracts and procedural documents ~~Performance bonds, labor and material payment bonds, and bid bonds~~ shall be executed on standard State of Colorado forms available on-line on the Office of the State Architect website.~~forms as prescribed by the Department of Personnel, State Buildings Section.~~

PART 3 CONSTRUCTION CONTRACT CLAUSES AND FISCAL RESPONSIBILITY

R-24-105-301 Contract Clauses and Their Administration~~.~~

~~The clauses required by §24-105-301 CRS are hereby promulgated and set forth in the General Conditions of the Contract in standard State of Colorado forms available on-line on the Office of the State Architect website. as Articles 35 General, 35A, 35B, 37, 38, 46, 48B, 49, and 50, as shown in Appendix A of these Procurement Rules. The entire text of the General Conditions of the Contract is included in Appendix A for the reader's convenience; however, only these articles are regulatory. All~~

other provisions of the General Conditions of the Contract are subject to revision without rulemaking.
(See Statute)

R-24-105-301-01 General Conditions of the Contract.

All construction contracts shall have incorporated as a part of the contract documents, "The General Conditions of the Contract," State in standard State of Colorado forms available on-line on the Office of the State Architect website.

R-24-105-302 Fiscal Responsibility.

(See Statute)

ARTICLE 106 MODIFICATION AND TERMINATION OF CONTRACTS (FOR OTHER THAN CONSTRUCTION)

R-24-106-101 Contract Clauses - Price Adjustments - Additional Clauses - Modification.

(See Statute)

R-24-106-101-01 Revisions to Contract Clauses

These clauses may be varied for use in a particular contract at the discretion of the procurement officer.

R-24-106-102-02 Changes Clause

(a) Changes Clause in Fixed-Price Contracts. In fixed-price contracts, the following clause may be inserted:

(i) Change Order. By a written order, at any time, and without notice to any surety, the procurement officer may, subject to all appropriate adjustments, make changes within the general scope of this contract in any one or more of the following:

(A) drawings, designs, or specifications, if the supplies to be furnished are to be specially manufactured for the purchasing agency in accordance therewith;

(B) method of shipment or packing; or

(C) place of delivery.

(ii) Adjustments of Price or Time or Performance. If any such change order increases or decreases, the contractor's cost of, or the time required for, performance of any part of the work under this contract, an adjustment shall be made and the contract modified in

writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this Contract.

Failure of the parties to agree to an adjustment shall not excuse the contractor from proceeding with the contract as changed, provided that the purchasing agency promptly and duly makes such provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of the time for completion.

(iii) Time Period for Claim. Within 30 days after receipt of a written change order under the Change Order paragraph of this clause, unless such period is extended by the procurement officer in writing, the contractor shall file notice of intent to assert a claim for an adjustment.

(iv) Claim Barred After Final Payment. No claim by the contractor for an adjustment hereunder shall be allowed if asserted after final payment under this contract.

R-24-106-101-03 Stop Work Order Clause

(a) Use of Clause. This clause is authorized for use in any fixed-price contract under which work stoppage may be required for reasons such as advancements in the state of the art, production modification, engineering changes or realignment of programs.

(b) Use of Orders

(i) Because stop work orders may result in increased costs by reason of standby costs, such orders will be issued only with prior approval of the procurement officer.

(ii) Stop work orders shall include, as appropriate:

(A) a clear description of work to be suspended;

(B) instructions as to the issuance of further orders by the contractor for material or services.

(iii) If an extension of the stop work order is necessary, it must be evidenced by a supplemental agreement as soon as feasible after a stop work order is issued. Any cancellation of a stop work order shall be subject to the same approvals as were required for the issuance of the order.

(c) Clause

(i) Order to Stop Work. The procurement officer may, by written order to the contractor, at any time, and without notice to any surety, require the contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period after the order is delivered to the contractor. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon

receipt of such an order, the contractor shall forthwith comply with its terms and take all reasonable steps to minimize the incurrence of costs allocatable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or as legally extended, the procurement officer shall either:

(A) cancel the stop work order; or

(B) terminate the work covered by such order; or

(C) terminate the contract.

(ii) Cancellation or Expiration of the Order. If a stop work order issued under this clause is properly cancelled, the contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the contract shall be modified in writing accordingly, if:

(A) the stop work order results in an increase in the time required for, or in the contractor's cost properly allocatable to, the performance of any part of this contract; and

(B) the contractor asserts claim for such an adjustment within 30 days after the end of the period of work stoppage.

(iii) Termination of Stopped Work. If the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise and such adjustment shall be in accordance with the Price Adjustment Clause of this contract.

R-24-106-101-04 Variations in Estimated Quantities Clause

(a) Define Quantity Contracts. The following clause may be used in definite quantity supply or service contracts:

"Upon the agreement of the parties, the quantity of supplies or services, or both, specified in this contract may be increased provided:

(i) the unit prices for the increased quantity increment will remain the same; and

(ii) such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract."

(b) Indefinite Quantity Contracts. No clause is provided here. However, the solicitation and contract should include:

(i) the minimum quantity, if any, the purchasing agency is obligated to order and the contractor to provide;

(ii) whether there is an approximate quantity the purchasing agency expects to order and how this quantity relates to the minimum and maximum quantities that may be ordered under the contract;

(iii) whether there is a maximum quantity the purchasing agency may order and the contractor must provide; and

(iv) whether the purchasing agency is obligated to order its actual requirements under the contract, with exception for a stated quantity, which if exceeded, separate bids may be solicited.

R-24-106-101-05 Price Adjustment Clause

The following clause may be used when price adjustments are anticipated:

(a) Price Adjustment Method. Any adjustment in contract price pursuant to the application of a clause in this contract shall be made in one or more of the following ways:

(i) by agreement on a fixed-price adjustment;

(ii) by unit prices specified in the contract;

(iii) in such other manner as the parties may mutually agree; or

(iv) in the absence of agreement between the parties, by a unilateral determination by the procurement officer of the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee.

(b) Submission of Cost or Pricing Data. The contractor shall provide cost or pricing data for any price adjustment subject to the provisions of the Cost or Pricing Data section of the Colorado State Procurement Rules.

R-24-106-101-06 Termination for Default Clause

(a) Default. If the contractor refuses or fails to timely perform any of the provisions of this contract, with such diligence as will ensure its completion within the time specified in this contract, the procurement officer may notify the contractor in writing of the non-performance, and if not promptly corrected, such officer may terminate the contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. The contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services elsewhere.

(b) Contractor's Duties. Notwithstanding termination of the contract and subject to any directions from the procurement officer, the contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the contractor in which the purchasing agency has an interest.

(c) Compensation. Payment for completed supplies delivered and accepted by the purchasing agency shall be at the contract price. The purchasing agency may withhold amounts due to the contractor as the procurement officer deems to be necessary to protect the purchasing agency

against loss because of outstanding liens or claims of former lien holders and to reimburse the purchasing agency for the excess costs incurred in procuring similar goods and services.

(d) Excuse for Nonperformance or Delayed Performance. The contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms if such failure arises out of acts of God; acts of the public enemy; acts of the state and any governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather.

Upon request of the contractor, the procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the purchasing agency.

(e) Erroneous Termination for Default. If after notice of termination of the contractor's right to proceed under the provisions of this clause, it is determined for any reason that the contractor was not in default under the provisions of this clause, or that the delay was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the termination for convenience clause.

R-24-106-101-07 Liquidated Damages Clause

The State may insert the following clause in construction contracts:

"When the contractor is given notice of delay or nonperformance and fails to cure in the time specified, in addition to any other damages that are applicable, the contractor shall be liable for a $_____ (amount to be filled in for each contract) per calendar day from date set for cure until either the purchasing agency reasonably obtains similar supplies or services if the contractor is terminated for default, or until the contractor provides the supplies or services if the contractor is not terminated for default. To the extent that the contractor's delay or nonperformance is excused under the Excuse for Nonperformance or Delayed Performance paragraph of the Termination for Default Clause of this contract, liquidated damages shall not be due the purchasing agency."

R-24-106-101-08 Termination for Convenience Clause

(a) Termination. The procurement officer may, when the interests of the purchasing agency so require, terminate this contract in whole or in part, for the convenience of the agency. The procurement officer shall give written notice of the termination to the contractor specifying the part of the contract terminated and when termination becomes effective. This in no way implies that the purchasing agency has breached the contract by exercise of the Termination for Convenience Clause.

(b) Contractor's Obligations. The contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the contractor will stop work to the extent specified. The contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The procurement officer may direct the contractor to assign the contractor's right, title, and interest under terminated orders or subcontracts to the purchasing agency. The contractor must still complete and deliver to the purchasing agency the work not terminated by the Notice of Termination and may incur obligations as are necessary to do so.

(c) Compensation.

(i) The contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data bearing on such claim. If the contractor fails to file a termination claim within 90 days from the effective date of termination, the procurement officer may pay the contractor, if at all, an amount set in accordance with subparagraph (c) (iii) in this paragraph.

(ii) The procurement officer and the contractor may agree to a settlement provided the contractor has filed a termination claim supported by cost or pricing data and that the settlement does not exceed the total contract price plus settlement costs, reduced by payments previously made by the purchasing agency, the proceeds of any sales of supplies and manufactured materials made under agreement, and the contract price of the work not terminated.

(iii) Absent complete agreement under subparagraph (b) of this paragraph, the procurement officer shall pay the contractor the following amounts, provided payments agreed to under subparagraph (b) shall not duplicate payments under this subparagraph:

(A) contract prices for supplies or services accepted under the contract;

(B) costs incurred in preparing to perform the terminated portion of the work plus a fair and reasonable profit on such portion of the work (such profit shall not include anticipatory profit or consequential damages) less amounts paid to or to be paid for accepted supplies or services; provided, however, that if it appears that the contractor would have been sustained a loss if the entire contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

(C) costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to the Contractor's Obligations paragraph of this clause. These costs must not include costs paid in accordance with subparagraph (c)(ii) of this paragraph;

(D) the reasonable settlement costs of the contractor including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to

the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection terminated portion of this contract. The total sum to be paid the contractor under this subparagraph shall not exceed the total contract price reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph (b) of this paragraph, and the contract price of work not terminated.

(iv) Costs claimed or agreed to under this section shall be in accordance with applicable sections of the Colorado ~~State~~ Procurement Code.

R-24-106-101-09 Novation, Assignment or Change of Name

(a) Assignment. No contract is transferable, or otherwise assignable, without the written consent of the procurement officer, provided, however, that a contractor may assign monies receivable under a contract after due notice to the purchasing agency.

(b) Recognition of a Successor in Interest Novation. When in the best interest of the purchasing agency, a successor in interest may be recognized in a novation agreement in which the transferor and the transferee shall agree that:

(i) the transferee assumes all of the transferor's obligations;

(ii) the transferor waives all rights under the contract as against the agency; and

(iii) unless the transferor guarantees performance of the contract by the transferee, the transferee shall, if required, furnish a satisfactory performance bond.

(c) Change of Name. When a contractor requests to change the name in which it holds a contract with a purchasing agency, the procurement officer responsible for the contract shall, upon receipt of a document indicating such change of name (for example, an amendment to the articles of incorporation of the corporation), enter into an agreement with the requesting contractor to effect such a change of name. The agreement changing the name should specifically indicate that no other terms and conditions of the contract are thereby changed.

ARTICLE 107 COST PRINCIPLES

R-24-107-101 Administrative Rules - Cost Reimbursement~~.~~

R-24-107-101-01 Applicability of Cost Principles

(a) Application. This subpart contains cost principles and procedures to be used as guidance in:

(i) establishment of contract cost estimates and prices under contracts made by competitive sealed proposals where the award may not be based on

adequate price competition, sole source procurement, contracts for certain services;

(ii) establishment of price adjustments for contract changes;

(iii) pricing of termination for convenience settlements; and

(iv) any other situation in which cost analysis is required.

(b) Limitation. Cost principles in this subpart are not applicable to:

(i) the establishment of prices under contracts made by competitive sealed bidding or otherwise based on adequate competition rather than the analysis of individual, specific cost elements, except that this subpart does apply to the establishment of adjustments of price for changes made to such contracts;

(ii) prices which are fixed by law or regulation;

(iii) prices which are based on established catalogue prices as defined in ~~Section~~ §24-103-101 (2) CRS~~of the Colorado Procurement Code~~, or established market price; and

(iv) stipulated unit prices.

R-24-107-101-02 Allowable Costs

(a) General. Any contract cost proposed for estimating purposes or invoiced for cost-reimbursement purposes shall be allowable as provided in the contract. The contract shall provide that the total allowable cost of a contract is the sum of the allowable direct costs actually incurred (or, in the case of forward pricing, the amount estimated to be incurred) in the performance of the contract in accordance with its terms, plus the properly allocable portion of the allowable indirect costs, less any applicable credits (such as discounts, rebates, refunds, and property disposal income).

(b) Accounting Consistency. All costs shall be accounted for in accordance with generally accepted accounting principles and in a manner that is consistent with the contractor's usual accounting practices in charging costs to other activities. In pricing a proposal, a contractor shall estimate costs consistently with cost accounting practices used in accumulating and reporting costs.

(c) When Allowable. The contract shall provide that costs shall be allowed to the extent they are:

(i) reasonable, as defined in ~~Section~~ Rule R-24-107-101-03 (Reasonable Costs);

(ii) allocable, as defined in ~~Section~~ Rule R-24-107-101-04 (Allocable Costs);

(iii) not made unlawful under any applicable law;

(iv) not allowable under ~~Section~~ Rule R-24-107-101-05 (Treatment of Specific Costs) or ~~Section~~ Rule R-24-107-101-06 (Costs Requiring Prior Approval to be Allowable); and

(v) actually incurred or accrued and accounted for in accordance with generally accepted accounting principles in the case of costs invoiced for reimbursement.

R-24-107-101-03 Reasonable Costs~~.~~

Any cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by an ordinarily prudent person in the conduct of competitive business. In determining the reasonableness of a given cost, consideration shall be given to:

(a) whether the cost is of a type generally recognized as ordinary and necessary for the conduct of the contractor's business or the performance of the contract;

(b) the restraints inherent in and the requirements imposed by such factors as generally accepted sound business practices, arm's length bargaining, federal and state laws and regulations, and contract terms and specifications;

(c) the action that a prudent businessman would take under the circumstances, considering responsibilities to the owners of the business, employees, customers, the purchasing agency, and the general public;

(d) significant deviations from the contractor's established practices which may unjustifiably increase the contract costs; and

(e) any other relevant circumstances.

R-24-107-101-04 Allocable Costs

(a) General. A cost is allocable if it is assignable or chargeable to one or more cost objectives in accordance with relative benefits received and if it:

(i) is incurred specifically for the contract;

(ii) benefits both the contract and other work, and can be distributed to both in reasonable proportion to the benefits received; or

(iii) is necessary to the overall operation of the business, although a direct relationship to any particular cost objective cannot be shown.

(b) Allocation Consistency. Costs are allocable as direct or indirect costs. Similar costs (those incurred for the same purpose, in like circumstances) shall be treated consistently either as direct costs or indirect costs except as provided by these regulations. When a cost is

treated as a direct cost in respect to one cost objective, it and all similar costs shall be treated as a direct cost for all cost objectives.

Further, all costs similar to those included in any indirect cost pool shall be treated as indirect costs. All distributions to cost objectives from a cost pool shall be on the same basis.

(c) Direct Cost. A direct cost is any cost which can be identified specifically with a particular cost objective. A direct cost shall be allocated only to its specific cost objective. To be allowable, a direct cost must be incurred in accordance with the terms of the contract.

(d) Indirect Costs

(i) An indirect cost is one identified with more than one cost objective. Indirect costs are those remaining to be allocated to the several cost objectives after direct cost have been determined and charged directly to the contract or other work as appropriate. Any direct costs of minor dollar amounts may be treated as indirect costs, provided that such treatment produces substantially the same results as treating the cost as a direct cost.

(ii) Indirect costs shall be accumulated into logical cost groups with consideration of the reasons for incurring the costs. Each group should be distributed to cost objectives benefiting from the costs in the group. Each indirect cost group shall be distributed to the cost objectives substantially in proportion to the benefits received by the cost objectives. The number and composition of the groups and the method of distribution should not unduly complicate indirect cost allocation where substantially the same results could be achieved through less precise methods.

(iii) The contractor's method of distribution may require examination when:

(A) any substantial difference exists between the cost patterns of the work performed under the contract and the contractor's other work;

(B) any significant change occurs in the nature of the business, the extent of subcontracting, fixed asset improvement programs, inventories, the volume of sales and production, manufacturing processes, the contractor's products, or other relevant circumstances; or

(C) indirect cost groups developed for a contractor's primary location are applied to off-site locations. Separate cost groups for costs allocable to off-site locations may be necessary to distribute the contractor's costs on the basis of the benefits accruing to the appropriate cost objectives.

(iv) The base period for indirect cost allocation is the one in which such costs are incurred and accumulated for distribution to work performed in that period. Normally, the base period is the contractor's fiscal year. A different base period may be appropriate under unusual circumstances. In such cases, an appropriate period should be agreed to in advance.

R-24-107-101-05 Treatment of Specific Costs

(a) Advertising. The only allowable advertising costs are those for:

(i) the recruitment of personnel;

(ii) the procurement of scarce items;

(iii) the disposal of scrap or surplus materials;

(iv) the listing of a business' name and location in a classified directory; and

(v) other forms of advertising as approved by the purchasing agency when in the best interest of the agency.

(b) Bad Debts. Bad debts include losses arising from uncollectible accounts and other claims, such as dishonored checks, employee advances, and related collection and legal costs. All bad debt costs are unallowable.

(c) Contingencies

(i) Contingency costs are contributions to a reserve account for unforeseen costs. Such contingency costs are unallowable except as provided in subsection (c)(ii) of this section.

(ii) For the purpose of establishing a contract cost estimate or price in advance of performance of the contract, recognition of uncertainties within a reasonably anticipated range of costs may be required and is not prohibited by this subsection. However, where contract clauses are present which serve to remove risks from the contractor, there shall not be included in the contract price a contingency factor for such risks. Further, contributions to a reserve for self-insurance in lieu of, and not in excess of, commercially available liability insurance premiums, are allowable as an indirect charge.

(d) Depreciation and Use Allowances

(i) Depreciation and use allowances are allowable to compensate contractors for the use of buildings, capital improvements and equipment. Depreciation is a method of allocating the acquisition cost of an asset to periods of its useful life. Useful life refers to the asset's period of economic usefulness in the particular contractor's operation as distinguished from its physical life. Use allowances provide compensation in lieu of depreciation or other equivalent costs. Consequently, these two methods may not be combined to compensate contractors for the use of any one type of property.

(ii) The computation of depreciation or use allowances shall be based on acquisition costs. When the acquisition costs are unknown, reasonable estimates may be used.

(iii) Depreciation shall be computed using any generally accepted method, provided that the method is consistently applied and results in equitable charges considering the use of the property. The straight-line method of depreciation is preferred unless the circumstances warrant some other method. However, the purchasing agency will accept any method which is accepted by the Internal Revenue Service.

(iv) In order to compensate the contractor for use of depreciated, contractor-owned property which has been fully depreciated on the contractor's books and records and is being used in the performance of a contract, use allowances are allowable, provided that they are computed in accordance with an established industry or government schedule or other method mutually agreed upon by the parties. If a schedule is not used, factors to consider in establishing the allowance are the original cost, remaining estimated useful life, the reasonable fair market value, the effect of any increased maintenance or decreased efficiency.

(e) Entertainment

(i) Entertainment costs include costs of amusements, social activities and incidental costs relating thereto, such as meals, beverages, lodging, transportation and gratuities. Entertainment costs are unallowable.

(ii) Nothing herein shall make unallowable a legitimate expense for employee morale, health, welfare, food service, or lodging cost; except that, where a net profit is generated by such employer related services, it shall be treated as a credit as provided in Section R-24-107-101-07 (Applicable Credits). This section shall not make unallowable costs incurred for meetings or conferences, including, but not limited to, costs of food, rental facilities, and transportation where the primary purpose of incurring such cost is the dissemination of technical information or the stimulation of production.

(f) Fines and Penalties. Fines and penalties include all costs incurred as the result of violations of or failure to comply with federal, state and local laws and regulations. Fines and penalties are unallowable costs unless incurred as a direct result of compliance with specific provisions of the contract or written instructions of the procurement officer. To the extent that workmen's compensation is considered by state law to constitute a fine or penalty, it shall not be an allowable cost under this subsection.

(g) Gifts, Contributions and Donations. A gift is property transferred to another person without the other person providing return consideration of equivalent value. Reasonable costs for employee morale, health, welfare, food services, or lodging are not gifts and are allowable. Contributions and donations are property transferred to a nonprofit institution which are transferred in exchange for supplies or services of equivalent fair market value rendered by a nonprofit institution. Gifts, contributions and donations are unallowable.

(h) Interest Costs

(i) Interest is a cost of borrowing. Interest is not allowable except as provided in subsection (h)(ii) of this section.

(ii) Interest costs on contractor claims for payments due under purchasing agency contracts shall be allowable as provided in ~~Section~~ §24-209-301 ~~of the Colorado Procurement Code~~CRS.

(iii) Losses Incurred Under Other Contracts. A loss is the excess of costs over income earned under a particular contract. Losses may include both direct and indirect costs. A loss incurred under one contract may not be charged to any other contract.

(i) Material Costs

(i) Material costs are the costs of all supplies, including raw material, parts and components (whether acquired by purchase from an outside source or acquired by transfer from any division, subsidiary, or affiliate under the common control of the contractor), which are acquired in order to perform the contract. Material costs are allowable, subject to subsection (j)(ii) and subsection (j)(iii) of this section. In determining material costs, consideration shall be given to reasonable spoilage, reasonable inventory losses and reasonable overages.

(ii) Material costs shall include adjustments for all available discounts, refunds, rebates and allowances which the contractor reasonably should take under the circumstances, and for credits for proceeds the contractor received or reasonably should receive from salvage and material returned to suppliers.

(iii) Allowance for all materials transferred from any division (including the division performing the contract), subsidiary, or affiliate under the common control of the contractor shall be made on the basis of costs incurred by the transferor (determined in accordance with these costs principles regulations, except that double charging of indirect costs is unallowable), except the transfer may be made at the established price provided that the price of materials is not determined to be unreasonable by the procurement officer and the price is not higher than the transferor's current sales price to its most favored customer for a like quantity under similar payment and delivery conditions and:

(A) the price is established either by the established catalogue price, as defined in ~~Section~~ §24-103-101(2) CRS~~of the Colorado Procurement Code~~; or

(B) by the lowest price offer obtained as a result of competitive sealed bidding or competitive sealed proposals conducted with other businesses that normally produce the item in similar quantities.

(j) Taxes

(i) Except as limited in subsection (k)(ii) of this section all taxes which the contractor is required to pay and which are paid and accrued in accordance with generally accepted accounting principles are allowable.

(ii) The following costs are unallowable:

(A) federal income taxes and federal excess profit taxes;

(B) all taxes from which the contractor could have obtained an exemption, but failed to do so, except where the administrative cost of obtaining the exemption would have exceeded the tax savings realized from the exemption;

(C) any interest, fines, or penalties paid on delinquent taxes unless incurred at the written direction of the procurement officer; and

(D) income tax accruals designed to account for the tax effects of differences between taxable income and pre-tax income as reflected by the contractor's books of account and financial statements.

(iii) Any refund of taxes which were allowed as a direct cost under the contract shall be credited to the contract. Any refund of taxes which were allowed as an indirect cost under a contract shall be credited to the indirect cost group applicable to contracts being priced or costs being reimbursed during the period in which the refund is made.

(iv) Direct government charges for services such as water, or capital improvements such as sidewalks, are not considered taxes and are allowable costs.

R-24-107-101-06 Cost Requiring Prior Approval to be Allowable

(a) General. The costs described in subsections (b), (c), (d), and (e) of this section are allowable as direct costs to cost-reimbursement type contracts to the extent that they have been approved in advance by the procurement officer. In other situations those costs are negotiable in accordance with general standards set out herein.

(b) Pre-Contract Costs. Pre-contract costs are those incurred prior to the effective date of the contract directly pursuant to, and in anticipation of, the award of the contract. Such costs are allowable to the extent that they would have been allowable if incurred after the date of the contract; provided that, in the case of a cost-reimbursement type contract, a special provision must be inserted in the contract setting forth the period of time and maximum amount of cost which will be covered as allowable pre-contract costs.

(c) Bid and Proposal Costs. Bid and proposal costs are the costs incurred in preparing, submitting and supporting bids and proposals. Reasonable ordinary bid and proposal costs are allowable as direct costs only to the extent that they are specifically permitted by a provision of the contract or solicitation document. Where bid and proposal costs are allowable as direct costs, to avoid double accounting, the same bid and proposal costs shall not be charged as indirect costs.

(d) Insurance

(i) Insurance costs are the costs of obtaining insurance in connection with performance of the contract or contributions to a reserve account for the purpose of self-insurance. Ordinary and necessary insurance costs are allowable in accordance with these cost principles. Self-insurance contributions are allowable only to the extent of the cost to the contractor to obtain similar insurance.

(ii) Insurance costs may be approved as a direct cost only if the insurance is specifically required for the performance of the contract.

(iii) Actual losses which should reasonably have been covered by permissible insurance or were expressly covered by self-insurance are unallowable unless the parties expressly agree otherwise in the terms of the contract.

(e) Litigation Costs. Litigation costs include all filing fees, legal fees, expert witness fees, and all other costs involved in litigating claims in court or before an administrative board. Litigation costs are allowable as indirect costs in accordance with these regulations, except that costs incurred in litigation against the purchasing agency are unallowable.

R-24-107-101-07 Applicable Credits

(a) Definitions and Examples. Applicable credits are receipts or price reductions which offset or reduce expenditures allocable to contracts as direct or indirect costs. Examples include purchase discounts, rebates, allowance, recoveries or indemnification for losses, sale of scraps and surplus equipment and materials, adjustments for overpayments or erroneous charges, and income from employee recreational, incidental, or services and food sales.

(b) Reducing Costs. Credits shall be applied to reduce related direct or indirect costs.

(c) Refund. The purchasing agency shall be entitled to a cash refund if the related expenditures have been paid to the contractor under a cost-reimbursement type contract.

R-24-107-101-08 Advance Agreements

(a) Purpose. Both the purchasing agency and the contractor should seek to avoid disputes and litigation arising from potential problems by providing in the terms of the contract the treatment to be accorded special or unusual costs.

(b) Procedure Required. Advance agreements may be negotiated either before or after contract award, but shall be negotiated before a significant portion of the cost covered by the agreement has been incurred. Advance agreements shall be in writing, executed by both contracting parties and incorporated in the contract.

(c) Limitation on Costs Covered. An advance agreement shall not provide for any treatment of costs inconsistent with these regulations unless a

determination has been made pursuant to ~~Section~~ Rule R-24-107-101-10 (Authority to Deviate from Cost Principles).

R-24-107-101-09 Use of Federal Cost Principles~~.~~

(a) Cost Negotiations. In dealing with contractors operating according to federal cost principles, such as Defense Acquisition Regulation, Section 15, or Federal Procurement Regulations, Part 1-15, the procurement officer, after notifying the contractor, may use the federal cost principles as guidance in contract negotiations, subject to subsection (b) of this section.

(b) Incorporation of Federal Cost Principles: Conflicts Between Federal Principles and This Part

(i) In contracts not awarded under a program which is funded by federal assistance funds, the procurement officer may explicitly incorporate federal cost principles into a solicitation and thus into any contract awarded pursuant to that solicitation. The procurement officer and the contractor by mutual agreement may incorporate federal cost principles into a contract during negotiation or after award. In either instance, the language incorporating the federal cost principles shall clearly state that to the extent federal cost principles conflict with the regulations issued pursuant to ~~Section~~ §25-107-101 ~~of the Colorado Procurement Code~~CRS, the state rules shall control.

(ii) In contracts awarded under a program which is financed in whole or in part by federal assistance funds, all requirements set forth in the assistance document including specified federal cost principles, must be satisfied. Therefore, to the extent that the cost principles specified in the grant document conflict with the cost principles issued pursuant to ~~Section~~ §24-107-101 ~~of the Colorado Procurement Code~~CRS, the cost principles specified in the grant shall control.

R-24-107-101-10 Authority to Deviate from Cost Principles

If a procurement officer desires to deviate from the cost principles set forth in these regulations, a written determination shall be made by such officer specifying the reasons for the deviation.

ARTICLE 108 SUPPLY MANAGEMENT

(Repealed~~Deleted~~. See Statute)

ARTICLE 109 REMEDIES

PART 1 PRELITIGATION RESOLUTION OF CONTROVERSIES

R-24-109-101 Resolution of Controversies~~.~~

(See Statute)

R-24-109-102-01 Filing of Protest

(a) Subject of Protest. Protestors may file a protest on any phase of solicitation or award, including but not limited to specifications, award, or disclosure of information marked confidential in the bid offer.

(b) Form. The written protest shall include, as a minimum, the following:

(i) the name and address of the protestor;

(ii) appropriate identification of the procurement by bid or award number;

(iii) a statement of the reasons for the protest; and

(iv) any available exhibits, evidence, or documents substantiating the protest.

R-24-109-102-02 Requested Information.

Any additional information regarding the protest should be submitted within the time period requested in order to expedite resolution of the protest. If any party fails to comply expeditiously with any request for information by the Director or head of a purchasing agency, the protest may be resolved without such information.

R-24-109-102-03 Decision

If an action concerning the protest has been commenced in court, the Director or head of a purchasing agency shall not act on the protest but shall refer it to the Attorney General. The decision shall inform the protester of his or her right to appeal administratively or judicially in accordance with Article 109 (Remedies) of the Colorado Procurement Code.

R-24-109-103 Stay of Procurements During Protest

(Repealed. See Statute)

CRS Section 24-109-103 CRS was repealed by the General Assembly effective June 6, 1985. This only affects Ccompetitive Ssealed Bbids or awards of any type other than Competitive Sealed Proposals. A stay of a contract for Competitive Sealed Proposals is in effect until any protest is resolved pursuant to CRS §24-109-102 CRS. (See CRS §24-103-203(7) CRS, effective April 8, 1996).

R-24-109-104 Entitlement to Costs.

(See Statute)

R-24-109-105 Debarment And Suspension.

R-24-109-105-01 Suspension.

(a) Initiation. After consultation with the affected using agency, the Attorney General, and where practicable, the contractor or potential

contractor who is to be suspended, the director may issue a written determination to suspend a person from consideration of contracts pending an investigation to determine whether cause exists for debarment. A notice of suspension, including a copy of the determination, shall be sent to the suspended contractor or prospective contractor. Such notice shall:

(i) state that the suspension will be for the period necessary to complete an investigation into possible debarment, as limited in ~~CRS~~ §24-109-105 ~~of the Colorado Procurement Code~~CRS;

(ii) inform the suspended person that bids or proposals will not be solicited from him or her and, if received, will not be considered during the period of suspension; and

(iii) inform the contractor or prospective contractor of his or her right to appeal administratively or judicially in accordance with Article 109 (Remedies) of the Colorado Procurement Code.

(b) Effect of Decision. A contractor or prospective contractor is suspended upon issuance of the notice of suspension; the suspension shall remain in effect during any appeals.

R-24-109-105-02 Debarment

(a) Initiation. Following completion of the investigation to determine whether a contractor or prospective contractor has engaged in activities which are a cause for debarment, and after consultation with the affected using agencies and Attorney General, the Director may debar a contractor or prospective contractor. A written notice of debarment shall be sent by certified mail, return receipt requested. The notice shall inform the debarred person of his or her right to appeal the decision administratively or judicially in accordance with Article 109 (Remedies) of the Colorado Procurement Code.

(b) Effect of Debarment Decision. A debarment decision will take effect 30 days after the contractor or prospective contractor receives notice of the decision unless an appeal is filed during that time. After the debarment decision takes effect, the person shall remain debarred unless a court, the Executive Director, or the person who issued the debarment decision orders otherwise or until the debarment period specified in the decision expires. A debarment may be for a specific purchasing agency or may apply to all agencies.

(c) Lists of Debarred and Suspended Persons. The Director shall maintain a current list of all debarred and suspended persons and shall send such lists and updates of it to heads of all purchasing agencies.

R-24-109-106 Resolution of Contract and Breach of Contract Controversies - Applicability - Authority~~.~~

R-24-109-106-01 Statement of Policy

The Colorado Procurement Code establishes procedures and remedies to resolve contract and breach of contract controversies between the state

and a contractor. It is the state's policy to try to resolve all controversies by mutual agreement through informal discussions without litigation. As used in these rules, the word "controversy" is meant to be broad and all-encompassing, including the full spectrum of disagreements from pricing of routine contract changes to claims of breach of contract.

R-24-109-106-02 Decision.

(a) Procurement Prior to Issuing Decisions. When a controversy cannot be resolved by mutual agreement, the Director or head of a purchasing agency shall, within 20 working days after receiving a written request by the contractor for a final decision, issue a written decision. Before issuing a final decision, the Director or head of a purchasing agency shall review the facts pertinent to the controversy and secure any necessary assistance from legal, fiscal, and other advisers.

(b) Final Decision. The Director or head of a purchasing agency shall immediately furnish a copy of the decision to the contractor by certified mail, return receipt requested. The decision shall include:

(i) a description of the controversy;

(ii) a reference to the pertinent contract provision;

(iii) a statement of the factual areas of agreement and disagreement;

(iv) the supporting rationale for the decision; and

(v) notice of the contractor's right to appeal the decision administratively or judicially in accordance with the provisions of Article 109 (Remedies) of the Colorado Procurement Code.

(c) Payments of Amounts Found Due. The amount and interest on the amount determined payable pursuant to the decision, less any portion already paid, normally should be paid without awaiting contractor action concerning appeal. Such payment shall be without prejudice to the rights of either party. If, on appeal, such payments are required to be returned, interest shall be paid from the date of payment.

PART 2 APPEALS

R-24-109-201 Appeal to the Executive Director.

(See Statute)

R-24-109-202 Rules Oof Procedure.

(See Statute)

R-24-109-202-01 Filing of Appeals.

(a) When to file. Appeals of decisions of the Director or head of a purchasing agency shall be submitted in writing to the Executive Director within ten (10) working days of the date a decision is mailed or within

twenty (20) working days of a decision regarding a suspension, debarment, or contract controversy. Appeals received after the prescribed time periods shall not be considered. (See §~~CRS~~ 24-109-203 CRS.)

(b) Form. The written appeal shall include copies of all documents and evidence previously submitted to the Director or head of a purchasing agency, any additional relevant information, and the decision rendered by the Director or head of a purchasing agency.

(c) Content. The appeal shall be limited to the issues raised in the original protest. However, the appeal may include new evidence or additional information related to those issues or issues related to the conduct of the protest process.

R-24-109-202-02 Additional Information

The Executive Director may request that the parties submit any additional information necessary to make a decision on the appeal. If any party fails to submit requested information within the time period set by the Executive Director, the appeal may be considered without such information.

R-24-109-202-03 Hearing by the Executive Director

(a) Request for Hearing. A contractor or prospective contractor bringing an appeal may request in writing that the Executive Director conduct a hearing on the appeal.

(b) Notice of Hearing. If a hearing is requested, the Executive Director, or his designee, shall send a written notice of the time and place of the hearing to all parties and the Attorney General. Such notice shall be sent by certified mail, return receipt requested.

(c) Hearing Procedures. Hearings shall be as informal as possible under the circumstances. The weight to be attached to any evidence presented shall be within the discretion of the Executive Director or his designee. Stipulations of fact agreed upon by the parties may be used as evidence at the hearing. The Executive Director, or his designee, may request evidence in addition to that presented by the parties. A hearing may be recorded but need not be transcribed except at the request and expense of the contractor or prospective contractor. A record of those present, identification of any written evidence presented, copies of all written statements, and a summary of the hearing shall be sufficient record. The Executive Director or his designee may:

(i) hold informal conferences to settle, simplify, or fix the issue or to consider other matters that may aid in an expeditious disposition of the appeal;

(ii) require parties to state their position with respect to the various issues;

(iii) require parties to produce for examination those relevant witnesses and documents under their control;

(iv) regulate the course of the hearing and conduct of participants;

(v) receive, rule on, exclude, or limit evidence and limit lines of questioning or testimony which are irrelevant, immaterial, or unduly repetitious;

(vi) request and set time limitation for submission of briefs; and

(vii) administer oaths or formulations.

R-24-109-203 Time Limitation for Appeals.

(See Statute)

R-24-109-204 Decision ~~by~~ of the Executive Director.

The Executive Director, or his designee, shall issue a final decision on the issue. Copies of the decision shall inform the contractor or prospective contractor of his or her rights to judicial appeals under Article 109 (Remedies) of the Colorado Procurement Code. However, if an action concerning the protest, suspension, debarment, or contract controversy has been commenced in court, the Executive Director shall not act on the matter, but shall refer it to the Attorney General.

R-24-109-205 Appeals to District Court.

(See Statute)

R-24-109-206 Time Limitations on Appeals to the District Court.

(See Statute)

PART 3 INTEREST

(See Statute)

PART 4 SOLICITATIONS AND AWARDS IN VIOLATION OF THE LAW

R-24-109-401 Applicability

This Rule addresses only requirements of procurement law. Any other violations of law or rule are not considered in this review process.

R-24-109-401-01 Definitions.

(a) An "unauthorized purchase" is any situation where a purchase has occurred or a purchase commitment has been made to a vendor to obtain goods or services, and:

(i) the requesting agency has not followed established applicable purchasing statutes and rules, or

(ii) a purchase or commitment to purchase is made by a person(s) who is not so authorized.

(b) "Ratification" is the act of the using agency's purchasing director, after review of all facts involved in an unauthorized purchase, sanctioning the unauthorized purchase.

(c) "Responsible individual(s)" is the person(s) who has made an unauthorized purchase.

R-24-109-402 Remedies Prior to an Award.

(See Statute)

R-24-109-403 Remedies After an Award.

(See Statute)

R-24-109-404 Liability of Public Employees.

R-24-109-404-01 Authority of the Director or Head of a Purchasing Agency.

The director or head of a purchasing agency is authorized, after review and consideration of all facts involved in an unauthorized purchase, to decide whether to ratify an unauthorized purchase.

R-24-109-404-02 Factors to be Considered in Ratification of an Unauthorized Purchase.

(a) The director or head of a purchasing agency, or their designee, shall consider all factors related to the procurement including, but not limited to, the following in making a decision whether or not to ratify an unauthorized purchase:

(i) the facts and circumstances giving rise to the need for the good or service, including the responsible individual's explanation as to why established procedures were not followed, and any lack of information or training on the part of the responsible individual;

(ii) indications of intent to deliberately evade established purchasing procedures;

(iii) whether the purchase, if it had been made according to established procedures, would have been reasonable (prudent) and appropriate;

(iv) the extent to which any competition was obtained;

(v) whether this is the first occurrence, or a repeat instance, by the responsible individual;

(vi) whether appropriate written assurances and safeguards have been established to preclude a subsequent unauthorized procurement; and

(vii) indications as to whether either the agency or vendor has acted fraudulently or in bad faith.

(b) A decision to ratify an unauthorized purchase shall weigh the above noted factors as they apply to the express goals of ~~State~~ the Colorado Procurement Code, ~~CRS~~ §24-101-102 CRS, and in particular fairness to any vendor who has acted fairly and in good faith.

R-24-109-404-03 Purchasing Agency Actions - Authorized Ratification~~.~~

(a) After consideration of the above factors, the state purchasing director or head of a purchasing agency may take one of the following actions:

(i) ratify the responsible individual's action and authorize issuance of a payment voucher, voucher request or purchase order if the procurement meets the substantive requirements of law and is only a procedural violation; or

(ii) refuse to ratify the responsible individual's action, but ratify the commitment and authorize issuance of a payment voucher, voucher request or purchase order if the procurement fails to meet the substantive requirements of law, the vendor has not acted fraudulently or in bad faith, and ratification of the commitment is in the best interests of the State; or

(iii) refuse to ratify the responsible individual's action and authorize issuance of a payment voucher, voucher request or purchase order for only the amount of actual expenses and reasonable profit, if the procurement fails to meet the substantive requirements of law, the vendor has not acted fraudulently or in bad faith, and ratification of the commitment is not in the best interests of the state.

(b) When ratification is denied pursuant to (a)(ii) or (a)(iii) of this subsection 04 above, a purchase order shall not be issued except in cases where it is necessary to effect payment and the purchase order shall so indicate.

(c) If during the review process, it is determined that:

(i) the vendor has acted fraudulently or in bad faith, the ratification shall be denied and there shall be no authorization of a payment voucher, voucher request or purchase order; or

(ii) the responsible person has acted fraudulently or in bad faith, there shall be no ratification, but authorization to issue a payment voucher, voucher request or purchase order may be given.

R-24-109-404-04 Purchasing Agency Actions - In the Event of Denial~~.~~

(a) In the event the director or head of a purchasing agency refuses to ratify the unauthorized procurement, the following actions shall occur:

(i) notification shall be sent to the responsible individual, the state controller, their agency controller and their agency head, that ratification is denied, and that the responsible individual(s) can be held personally liable for payment;

(ii) notification shall be sent to the affected vendor(s) that the State has denied responsibility for the purchase in whole or in part as determined in the ratification review process; and notification shall be sent to the director.

(b) In the event a court action is started involving a procurement that is undergoing a ratification review, the ratification process shall cease and be referred to the Attorney General.

R-24-109-404-05 Written Determination~~.~~

A written determination setting forth the basis for the decision shall be made and included in the procurement record.

ARTICLE 110 INTERGOVERNMENTAL RELATIONS

PART 1 DEFINITIONS

(See Statute)

PART 2 COOPERATIVE PURCHASING

R-24-110-201-01 Cooperative Purchasing

The Executive Director or ~~his~~ designee may approve the purchase of goods or services in accordance with §24-110-201(2) CRS if ~~he finds~~found ~~that~~ such purchase is in the best interests of the ~~s~~State, after considering: (1) ~~T~~The interests of Colorado vendors ~~and vendors registered with the BIDS system~~; (2) the competitiveness of pricing under the cooperative ~~contract~~procurement; (3) the efficiencies and cost savings of using the cooperative procurement~~contract~~, beyond the savings and administrative convenience achieved from not having to comply with Article 103 of the Colorado Procurement Code; and (4) the purposes of the Colorado Procurement Code, as set forth in §24-101-102 CRS.

(a) The head of a purchasing agency shall make the request through the State Purchasing Director, addressing the considerations set forth above.

(b) The Executive Director or his designee may approve a single purchase, make a conditional approval, or approve participation in an on-going program with the external procurement activity or the local public procurement unit. Participation in an on-going program must be for a specific period of time, not to exceed two years.

PART 3 CONTRACT CONTROVERSIES

(See Statute)

ARTICLE 111 PREFERENCES IN AWARDING CONTRACTS - FEDERAL ASSISTANCE REQUIREMENTS

R-24-111-101 Exemptions for Prescribed Methods of Source Selection.

(See Statute)

R-24-111-102 Priorities Among Preferences.

(See Statute)

R-24-111-102-01 Minority-owned and Women-owned Business Enterprises

It is the policy of this State that all procurement offices shall make a special effort to solicit and encourage minority-owned and women-owned business participation for state contracts and awards. All state procurement offices are mandated to implement the spirit and direction offered by present or future executive orders relating to this subject. Agencies and institutions are encouraged, to the greatest extent possible without sacrificing adequate competition, to ensure active participation by minority-owned and women-owned business enterprises.

R-24-111-102-02 Preferences

(a) No provision is made in this Code for preferences or set asides for minority-owned or women-owned businesses.

(b) In the event tie low bids are received in response to solicitations for bids for commodities, pursuant to §24-103-202 C.R.S., preference is given to the Resident bidder, pursuant to §§24-103-202.5 and 8-18-101, C.R.S.

(c) A Non-Resident bidder shall be subject to the same percentage disadvantage as a Colorado bidder would have in their home state as required in §§8-19-104(2) and 8-19-104(3), C.R.S.

ARTICLE 112 EFFECTIVE DATE - APPLICABILITY

R-24-112-101-01 Effective Date - Applicability

Rules implementing the Colorado Procurement Law, SB-130, Title 24, shall become effective January 1, 1982. All contracts solicited or entered into after January 1, 1982, shall be in accordance to Title 24, and enacted rules implementing that Title.

COLORADO PROCUREMENT RULES

~~Appendix A : General Conditions of the Contract~~

~~The construction contract clauses required by § 24-105-301 CRS are set forth in the General Conditions of the Contract as Articles 35 General, Article 35A, Article 35B, Article 37, Article 38, Article 46, Article 48B, Article 49, and Article 50. The entire text of the General Conditions of the Contract is included in this Appendix A for the reader's convenience; however, only these articles are regulatory. All other~~

~~provisions of the General Conditions of the Contract are subject to revision without rulemaking.~~

~~ARTICLE 1. DEFINITIONS~~

~~A. CONTRACT DOCUMENTS~~

~~The Contract Documents consist of:~~

~~1. Agreement; (SC-6.21);~~

~~2. Performance Bond (SC-6.22) and Labor and Material Payment Bond (SC-6.221);~~

~~3. General and Supplementary General Conditions of the Contract (SC-6.23);~~

~~4. Detailed Specification Requirements, including all addenda issued prior to the opening of the bids; and,~~

~~5. Drawings, including all addenda issued prior to the opening of the bids.~~

~~6. Change Orders (SC-6.31) and Amendments (SBP-02), if any, when properly executed.~~

~~B. PROCEDURAL DOCUMENTS~~

~~The Procedural Documents used in the administration and performance of the Agreement consist of:~~

~~1. Advertisement for Bids;~~

~~2. Information for Bidders (SC-6.12);~~

~~3. Bid (SC-6.13);~~

~~4. Bid Bond (SC-6.14);~~

~~5. Notice of Award (SC-6.15);~~

~~6. Builder's risk insurance certificates of insurance (ACORD 25-S);~~

~~7. Liability and workers' compensation certificates of insurance;~~

~~8. Notice to Proceed (SC-6.23);~~

~~9. Notice of Approval of Beneficial Occupancy (SBP-01);~~

~~10. Notice of Partial Substantial Completion (SBP-07.1);~~

~~11. Notice of Substantial Completion (SBP-07);~~

~~12. Notice of Partial Final Acceptance (SC-6.28);~~

13. Notice of Acceptance (SC-6.27);

14. Notice of Partial Contractor's Settlement (SC-7.31);

15. Notice of Contractor's Settlement (SC-7.3);

16. Certificates for Contractor's Payment (SC-7.2 and SC-7.2A);

17. Other procedural and reporting documents or forms referred to in the General Conditions, the Supplementary General Conditions, the Specifications or required by the State Buildings Programs or the Principal Representative, including but not necessarily limited to closing out check list (SBP-05) and punch list forms (SBP-06), and the Building Inspection Report (SBP-BIR). A list of the current standard State Buildings Programs forms applicable to this Contract may be obtained from the Principal Representative on request.

C. DEFINITIONS OF WORDS AND TERMS USED

1. AGREEMENT. The term "Agreement" shall mean the written agreement entered into by the State of Colorado acting by and through the Principal Representative and the Contractor for the performance of the Work and payment therefore, on State Form SC-6.21. The term Agreement when used without reference to State Form SC-6.21 may also refer to the entirety of the parties' agreement to perform the Work described in the Contract Documents or reasonably inferable there from. The term "Contract" shall be interchangeable with this latter meaning of the term Agreement

2. ARCHITECT/ENGINEER. The term "Architect/Engineer" shall mean either the architect of record or the engineer of record under contract to the State of Colorado for the Project identified in the Contract Documents.

3. BENEFICIAL OCCUPANCY. The term "Beneficial Occupancy" means occupancy taken by the State as Owner prior to the Date of Substantial Completion at a time when a building or other discrete physical portion of the Project is used for the purpose intended. The Date of Beneficial Occupancy shall be the date of such first use, but shall not be prior to the date of execution of the Notice of Approval of Beneficial Occupancy. Prior to the date of execution of a Notice of Approval of Beneficial Occupancy the State shall have no right to occupy and the project may not be considered safe for occupancy for the intended use.

4. CHANGE ORDER. The term "Change Order" means a written order, signed by a Procurement Officer, directing the Contractor to make changes in the Work, in accordance with Article 35A, The Value Of Changed Work.

5. COLORADO LABOR. The term "Colorado labor" shall be defined, as provided in § 8-17-101, C.R.S., as any person who is a resident of the state of Colorado, at the time of employment, without discrimination as to race, color, creed, sex, age, or religion except when sex or age is a bona fide occupational qualification, or shall have such other meaning as the term may otherwise be given in § 8-17-101, C.R.S., as amended.

6. CONTRACTOR. The word "Contractor" shall mean the person, company, firm, corporation or other legal entity entering into a contract with the State of Colorado acting by and through the Principal Representative.

7. DAYS. The term "days" whether singular or plural shall mean calendar days unless expressly stated otherwise. Where the term "business days" is used it shall mean business days of the State of Colorado.

8. DRAWINGS. The term "Drawings" shall mean all drawings approved by appropriate State officials which have been prepared by the Architect/Engineer showing the work to be done, except that where a list of drawings is specifically enumerated in the Supplementary General Conditions or division 1 of the Specifications, the term shall mean the drawings so enumerated, including all addenda drawings.

9. EMERGENCY FIELD CHANGE ORDER. The term "Emergency Field Change Order" shall mean a written change order for extra work or a change in the work necessitated by an emergency as defined in Article 35C executed on State form SC 6.31 and identified as an Emergency Field Change Order. The use of such orders is limited to emergencies and to the amounts shown in Article 35C.

10. FINAL ACCEPTANCE. The terms "final acceptance" or "finally complete" mean the stage in the progress of the work, after substantial completion, when all remaining items of work have been completed, all requirements of the Contract Documents are satisfied and the Notice of Acceptance can be issued. Discrete physical portions of the Project may be separately and partially deemed finally complete at the discretion of the Principal Representative when that portion of the Project reaches such stage of completion and a partial Notice of Acceptance can be issued.

11. NOTICE. The term "Notice" shall mean any communication in writing from either contracting party to the other by such means of delivery that receipt cannot properly be denied. Notice shall be provided to the person identified to receive it in Article 54E, Notice Identification, or to such other person as either party identifies in writing to receive Notice. Notice by facsimile transmission where proper transmission is evidence shall be adequate where facsimile numbers are included in Article 54E. Notwithstanding an email delivery or return receipt, email Notice shall not be adequate. Acknowledgment of receipt of a voice message shall not be deemed to waive the requirement that Notice, where required, shall be in writing.

12. OWNER. The term "Owner" shall mean the Principal Representative.

13. PRINCIPAL REPRESENTATIVE. The term "Principal Representative" shall be defined, as provided in § 24-30-1301(11), C.R.S., as the governing board of a state department, institution, or agency; or if there is no governing board, then the executive head of a state department, institution, or agency, as designated by the governor or the general assembly and as specifically identified in the Contract Documents, or shall have such other meaning as the term may otherwise be given in § 24-30-1301(11), C.R.S., as amended. The Principal Representative may delegate authority.

~~The Contractor shall have the right to inquire regarding the delegated authority of any of the Principal Representative's representatives on the project and shall be provided with a response in writing when requested.~~

~~14. PROCUREMENT OFFICER. The term "Procurement Officer" means any person duly authorized to enter into and administer contracts and make written determinations with respect thereto. "Procurement Officer" includes an authorized representative of the Principal Representative acting within the limits of his or her authority.~~

~~15. PRODUCT DATA. The term "Product Data" shall mean all submittals in the form of printed manufacturer's literature, manufacturer's specifications, and catalog cuts.~~

~~16. REASONABLY INFERABLE: The phrase "reasonably inferable" means that if an item or system is either shown or specified, all material and equipment normally furnished with such items or systems and needed to make a complete installation shall be provided whether mentioned or not, omitting only such parts as are specifically excepted, and shall include only components which the Contractor could reasonably anticipate based on his or her skill and knowledge using an objective, industry standard, not a subjective standard. This term takes into consideration the normal understanding that not every detail is to be given on the Drawings and Specifications. The phrase shall not, however, be construed to make the Contractor, rather than the Architect/Engineer, responsible for producing the Drawings and Specifications~~

~~17. SAMPLES. The term "Samples" shall mean examples of materials or work provided to establish the standard by which the Work will be judged.~~

~~18. SC. The term "SC" means "State Contract" which is used in connection with labeling applicable State form documents (e.g. "SC 6.23" is the State form number for these General Conditions of the Contract).~~

~~19. SBP. The term "SBP" means "State Buildings", which is used in connection with labeling applicable State form documents (e.g., "SBP-01" is the form number for Notice of Approval of Beneficial Occupancy).~~

~~20. SHOP DRAWINGS. The term "Shop Drawings" shall mean any and all detailed drawings prepared and submitted by Contractor, Subcontractor at any tier, vendors or manufacturers providing the products and equipment specified on the Drawings or called for in the Specifications.~~

~~21. SPECIFICATIONS. The term "Specifications" shall mean the requirements of divisions 1 through 17 of the project manual prepared by the Architect/Engineer describing the work to be accomplished.~~

~~22. STATE BUILDINGS PROGRAMS. The term "State Buildings Programs" is the shortened name of the division of State Buildings and Real Estate Programs. It shall refer to the division of the executive department of State government responsible for project administration, review, approval and coordination of plans, construction procurement policy, contractual procedures, and code compliance and inspection of all buildings, public works and improvements erected for state purposes; except public roads and~~

highways and projects under the supervision of the division of wildlife and the division of parks and outdoor recreation as provided in § 24-30-1301, et seq, C.R.S. The term State Buildings Programs shall also mean that individual within a State Department agency or institution, including institutions of higher education, who has signed an agreement accepting delegation to perform all or part of the responsibilities and functions of State Buildings Programs.

23. SUBCONTRACTOR. The term "Subcontractor" shall mean a person, company, firm, corporation or other legal entity supplying labor and materials on-site, or only labor, for Project work under separate contract or agreement with the Contractor. The term "Subcontractor at any tier" shall mean all Subcontractors, and shall include subcontractors to Subcontractors, as well as subcontractors to such subcontractors, supplying labor and materials on site, or only labor, for Project work for, and under separate contract or agreement with, a Subcontractor or other subcontractor.

24. SUBMITTALS. The term "submittals" means drawings, lists, tables, documents and samples prepared by the Contractor to facilitate the progress of the work as required by these General Conditions or the Drawings and Specifications. They consist of Shop Drawings, Product Data, Samples, and various administrative support documents including but not limited to lists of subcontractors, construction progress schedules, schedules of values, applications for payment, inspection and test results, requests for information, various document logs, and as-built drawings. Submittals are required by the Contract Documents, but except to the extent expressly specified otherwise are not themselves a part of the Contract Documents.

25. SUBSTANTIAL COMPLETION. The terms "substantial completion" or "substantially complete" mean the stage in the progress of the work when the construction is sufficiently complete, in accordance with the Contract Documents as modified by any Change Order s, so that the Work, or at the discretion of the Principal Representative, any designated portion hereof, is available for its intended use by the Principal Representative and a Notice of Substantial Completion can be issued. Portions of the Project may, at the discretion of the Principal Representative, be designated as substantially complete.

26. SURETY. The term "Surety" shall mean the company providing the labor and material payment and performance bonds for the Contractor as obligor.

27. WORK. The term "Work" shall mean all or part of the labor, materials, equipment, and other services required by the Contract Documents or otherwise required to be provided by the Contractor to meet the Contractor's obligations under the Contract.

ARTICLE 2. EXECUTION, CORRELATION, INTENT OF DOCUMENTS, COMMUNICATION AND COOPERATION

A. EXECUTION

The Contractor, within ten (10) days from the date of Notice of Award, will be required to:

1. Execute the Agreement, State Form SC-6.21;

2. Furnish fully executed Performance and Labor and Material Payment Bonds on State Forms SC-6.22 and SC-6.221; and

3. Furnish certificates of insurance evidencing all required insurance on standard Acord forms designed for such purpose.

4. Furnish certified copies of any insurance policies requested by the Principal Representative.

B. CORRELATION

By execution of the Agreement the Contractor represents that the Contractor has visited the site, has become familiar with local conditions and local requirements under which the Work is to be performed, including the building code programs of the State Buildings Program as implemented by the Principal Representative, and has correlated personal observations with the requirements of the Contract Documents.

C. INTENT OF DOCUMENTS

The Contract Documents are complementary, and what is called for by any one document shall be as binding as if called for by all. The intention of the documents is to include all labor, materials, equipment and transportation necessary for the proper execution of the Work. Words describing materials or work which have a well-known technical or trade meaning shall be held to refer to such recognized standards.

In any event, if any error exists, or appears to exist, in the requirements of the Drawings or Specifications, or if any disagreement exists as to such requirements, the Contractor shall have the same explained or adjusted by the Architect/Engineer before proceeding with the work in question. In the event of the Contractor's failure to give prior written Notice of any such errors or disagreements of which the Contractor or the Subcontractors at any tier are aware, the Contractor shall, at no additional cost to the Principal Representative, make good any damage to, or defect in, work which is caused by such omission.

Where a conflict occurs between or within standards, Specifications or Drawings, which is not resolved by reference to the precedence between the Contract Documents, the more stringent or higher quality requirements shall apply so long as such more stringent or higher quality requirements are reasonably inferable. The Architect/Engineer shall decide which requirements will provide the best installation.

With the exception noted in the following paragraph, the precedence of the Contract Documents is in the following sequence:

1. The Agreement (SC-6.21);

2. The Supplementary General Conditions, if any;

~~3. The General Conditions (SC-6.23); and~~

~~4. Drawings and Specifications, all as modified by any addenda.~~

~~Change Orders and Amendments, if any, to the Contract Documents take precedence over the original Contract Documents.~~

~~Notwithstanding the foregoing order of precedence, the Special Provisions of Article 52 of the General Conditions, Special Provisions, shall take precedence, rule and control over all other provisions of the Contract Documents.~~

~~Unless the context otherwise requires, form numbers in this document are for convenience only. In the event of any conflict between the form required by name or context and the form required by number, the form required by name or context shall control. The Contractor may obtain State forms from the Principal Representative upon request.~~

~~D. PARTNERING, COMMUNICATIONS AND COOPERATION~~

~~In recognition of the fact that conflicts, disagreements and disputes often arise during the performance of construction contracts, the Contractor and the Principal Representative aspire to encourage a relationship of open communication and cooperation between the employees and personnel of both, in which the objectives of the Contract may be better achieved and issues resolved in a more fully informed atmosphere.~~

~~The Contractor and the Principal Representative each agree to assign an individual who shall be fully authorized to negotiate and implement a voluntary partnering plan for the purpose of facilitating open communications between them. Within thirty days (30) of the Notice to Proceed, the assigned individuals shall meet to discuss development of an informal agreement to accomplish these goals.~~

~~The assigned individuals shall endeavor to reach an informal agreement, but shall have no such obligation. Any plans these parties voluntarily agree to implement shall result in no change to the contract amount, and no costs associated with such plan or its development shall be recoverable under any contract clause. In addition, no plan developed to facilitate open communication and cooperation shall alter, amend or waive any of the rights or duties of either party under the Contract unless and except by written Amendment to the Contract, nor shall anything in this clause or any subsequently developed partnering plan be deemed to create fiduciary duties between the parties unless expressly agreed in a written Amendment to the Contract. It is also recognized that projects with relatively low contract values may not justify the expense or special efforts required. In the case of small projects with an initial Contract value under $500,000, the requirements of the preceding paragraph shall not apply.~~

~~ARTICLE 3. COPIES FURNISHED~~

~~The Contractor will be furnished, free of charge, the number of copies of Drawings and Specifications as specified in the Contract Documents, or if~~

no number is specified, all copies reasonably necessary for the execution of the work.

ARTICLE 4. OWNERSHIP OF DRAWINGS

Drawings or Specifications, or copies of either, furnished by the Architect/Engineer, are not to be used on any other work. At the completion of the Work, at the written request of the Architect/Engineer, the Contractor shall endeavor to return all Drawings and Specifications.

The Contractor may retain the Contractor's Contract Document set, copies of Drawings and Specifications used to contract with others for any portion of the Work and a marked up set of as-built drawings.

ARTICLE 5. ARCHITECT/ENGINEER'S STATUS

The Architect/Engineer is the representative of the Principal Representative for purposes of administration of the Contract, as provided in the Contract Documents and the Agreement. In case of termination of employment or the death of the Architect/Engineer, the Principal Representative will appoint a capable Architect/Engineer against whom the Contractor makes no reasonable objection, whose status under the Contract shall be the same as that of the former Architect/Engineer.

ARTICLE 6. ARCHITECT/ENGINEER DECISIONS AND JUDGMENTS, ACCESS TO WORK AND INSPECTION

A. DECISIONS

The Architect/Engineer shall, within a reasonable time, make decisions on all matters relating to the execution and progress of the Work or the interpretation of the Contract Documents, and in the exercise of due diligence shall be reasonably available to the Contractor to timely interpret and make decisions with respect to questions relating to the design or concerning the Contract Documents.

B. JUDGMENTS

The Architect/Engineer is, in the first instance, the judge of the performance required by the Contract Documents as it relates to compliance with the Drawings and Specifications and quality of workmanship and materials.

The Architect/Engineer shall make judgments regarding whether directed work is extra or outside the scope of Work required by the Contract Documents at the time such direction is first given. If, in the Contractor's judgment, any performance directed by the Architect/Engineer is not required by the Contract Documents or if the Architect/Engineer does not make the judgment required, it shall be a condition precedent to the filing of any claim for additional cost related to such directed work that the Contractor, before performing such work, shall first obtain in writing, the Architect/Engineer's written decision that such directed work is included in the performance required by the Contract Documents. If the

~~Architect/Engineer's direction to perform the work does not state that the work is within the performance required by the Contract Documents, the Contractor shall, in writing, request the Architect/Engineer to advise in writing whether the directed work will be considered extra work or work included in the performance required by the Contract Documents.~~

~~The Architect/Engineer shall respond to any such written request for such a decision within three (3) business days and if no response is provided, or if the Architect/Engineer's written decision is to the effect that the work is included in the performance required by the Contract Documents, the Contractor may file with the Principal Representative and the Architect/Engineer a Notice of claim in accordance with Article 36, Claims. Whether or not a Notice of claim is filed, the Contractor shall proceed with the ordered work. Disagreement with the decision of the Architect/Engineer shall not be grounds for the Contractor to refuse to perform the work directed or to suspend or terminate performance.~~

~~C. ACCESS TO WORK~~

~~The Architect/Engineer, the Principal Representative and representatives of State Buildings Programs shall at all times have access to the work. The Contractor shall provide proper facilities for such access and for their observations or inspection of the work.~~

~~D. INSPECTION~~

~~The Architect/Engineer has agreed to make, or that structural, mechanical, electrical engineers or other consultants will make, periodic visits to the site to generally observe the progress and quality of the Work to determine in general if the Work is proceeding in accordance with the Contract Documents. Observation may extend to all or any part of the Work and to the preparation, fabrication or manufacture of materials.~~

~~Without in any way meaning to be exclusive or to limit the responsibilities of the Architect/Engineer or the Contractor, the Architect/Engineer has agreed to observe, among other aspects of the Work, the following for compliance with the Contract Documents:~~

~~1. Bearing surfaces of excavations before concrete is placed based upon the findings and recommendations of the Principal Representative's soils engineering consultant;~~

~~2. Reinforcing steel after installation and before concrete is poured;~~

~~3. Structural concrete;~~

~~4. Laboratory reports on all concrete testing based upon the findings and recommendations of the Principal Representative's testing consultant;~~

~~5. Structural steel during and after erection and prior to its being covered or enclosed;~~

~~6. Steel welding; Principal Representative will furnish steel welding inspection consultant/agency if required or necessary for the project;~~

7. Mechanical and plumbing work following its installation and prior to its being covered or enclosed;

8. Electrical work following its installation and prior to its being covered or enclosed;

9. Compaction testing reports based upon the findings and recommendations of the Principal Representative's testing consultant; and

10. Any special or quality control testing required in the Contract Documents provided by the Principal Representative's testing consultant.

If the Specifications, the Architect/Engineer's instructions, laws, ordinances of any public authority require any work to be specifically tested or approved, the Contractor shall give the Architect/Engineer timely notice of its readiness for observation by the Architect/Engineer or inspection by another authority, and if the inspection is by another authority, of the date fixed for such inspection, required certificates of inspection being secured by the Contractor. The Contractor shall give all required Notices to the Principal Representative or his or her designee for inspections required for the building inspection program. It shall be the responsibility of the Contractor to determine the Notice required by the State pursuant to Building Inspection Record for the Project, according to State form SBP-B.I.R., or the equivalent form required by the Principal Representative as approved by the State Buildings Program. If any such work is covered up without approval or consent of the Architect/Engineer or prior to any building code inspection, it must, if required by the Architect/Engineer, the Principal Representative or the State Buildings Programs, be uncovered for examination, at the Contractor's expense. If such work is found to be not in accordance with the Contract Documents, the Contractor shall pay such costs, unless he or she shall show that the defect in the work was caused by another contractor engaged by the Principal Representative. In that event, the Principal Representative shall pay such cost. In addition, examination of questioned work may be ordered, and if so ordered, the work must be uncovered by the Contractor. If such work be found in accordance with the Contract Documents, the Contractor shall be reimbursed the cost of examination and replacement.

ARTICLE 7. CONTRACTOR'S SUPERINTENDENCE AND SUPERVISION

The Contractor shall employ, and keep present on the Project during its progress, a competent superintendent and any necessary assistants, all satisfactory to the Architect/Engineer and the Principal Representative. The superintendent shall not be changed except with the consent of the Architect/Engineer and the Principal Representative, unless the superintendent proves to be unsatisfactory to the Contractor and ceases to be in his or her employ. The superintendent shall represent the Contractor in his or her absence and all directions given to the superintendent shall be as binding as if given to the Contractor. Directions received by the superintendent shall be documented by the superintendent and confirmed in writing with the Contractor.

~~The Contractor shall give efficient supervision to the Work, using his or her best skill and attention. He or she shall carefully study and compare all Drawings, Specifications and other written instructions and shall without delay report any error, inconsistency or omission which he or she may discover in writing to the Architect/Engineer. The Contractor shall not be liable to the Principal Representative for damage to the extent it results from errors or deficiencies in the Contract Documents or other instructions by the Architect/Engineer, unless the Contractor knew or had reason to know, that damage would result by proceeding and the Contractor fails to so advise the Architect/Engineer.~~

~~The superintendent shall see that the Work is carried out in accordance with the Contract Documents and in a uniform, thorough and first-class manner in every respect. The Contractor's superintendent shall establish all lines, levels, and marks necessary to facilitate the operations of all concerned in the Contractor's Work. The Contractor shall lay out all work in a manner satisfactory to the Architect/Engineer, making permanent records of all lines and levels required for excavation, grading, foundations, and for all other parts of the Work.~~

~~ARTICLE 8. MATERIALS AND EMPLOYEES~~

~~Unless otherwise stipulated, the Contractor shall provide and pay for all materials, labor, water, tools, equipment, light, power, transportation and other facilities necessary for the execution and completion of the Work.~~

~~Unless otherwise specified, all materials shall be new and both workmanship and materials shall be first class and of uniform quality. The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials.~~

~~The Contractor is fully responsible for all acts and omissions of the Contractor's employees and shall at all times enforce strict discipline and good order among employees on the site. The Contractor shall not employ on the Work any person reasonably deemed unfit by the Principal Representative or anyone not skilled in the work assigned to him.~~

~~ARTICLE 9. SURVEYS, PERMITS, LAWS, TAXES AND REGULATIONS~~

~~A. SURVEYS~~

~~The Principal Representative shall furnish all surveys, property lines and bench marks deemed necessary by the Architect/Engineer, unless otherwise specified.~~

~~B. PERMITS AND LICENSES~~

~~Permits and licenses necessary for the prosecution of the Work shall be secured and paid for by the Contractor. Unless otherwise specified in the Specifications, no local municipal or county building permit shall be required. However, State Buildings Programs requires each Principal Representative to administer a building code inspection program, the implementation of which may vary at each agency or institution of the~~

State. The Contractors' employees shall become personally familiar with these local conditions and requirements and shall fully comply with such requirements. State electrical and plumbing permits are required, unless the requirement to obtain such permits is altered by State Building's Programs. The Contractor shall obtain and pay for such permits.

Easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the Principal Representative, unless otherwise specified.

C. TAXES

1. REFUND OF SALES AND USE TAXES

The Contractor shall pay all local taxes required to be paid, including but not necessarily limited to all sales and use taxes. If requested by the Principal Representative prior to issuance of the Notice to Proceed or directed in the Supplementary General Conditions or the Specifications, the Contractor shall maintain records of such payments in respect to the Work, which shall be separate and distinct from all other records maintained by the Contractor, and the Contractor shall furnish such data as may be necessary to enable the State of Colorado, acting by and through the Principal Representative, to obtain any refunds of such taxes which may be available under the laws, ordinances, rules or regulations applicable to such taxes. When so requested or directed, the Contractor shall require Subcontractors at all tiers to pay all local sales and use taxes required to be paid and to maintain records and furnish the Contractor with such data as may be necessary to obtain refunds of the taxes paid by such Subcontractors. No State sales and use taxes are to be paid on material to be used in this Project. On application by the purchaser or seller, the Department of Revenue shall issue to a Contractor or to a Subcontractor at any tier, a certificate or certificates of exemption per § 39-26114(1)(d), C.R.S., and § 39-26-203, C.R.S.

2. FEDERAL TAXES

The Contractor shall exclude the amount of any applicable federal excise or manufacturers' taxes from the proposal. The Principal Representative will furnish the Contractor, on request exemption certificates.

D. LAWS AND REGULATIONS

The Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the Work as drawn or specified. If the Contractor observes that the Drawings or Specifications require work which is at variance therewith, the Contractor shall without delay notify the Architect/Engineer in writing and any necessary changes shall be adjusted as provided in Article 35, Changes In The Work.

The Contractor shall bear all costs arising from the performance of work required by the Drawings or Specifications that the Contractor knows to be contrary to such laws, ordinances, rules or regulations, if such work is performed without giving Notice to the Architect/Engineer.

~~ARTICLE 10. PROTECTION OF WORK AND PROPERTY~~

~~A. GENERAL PROVISIONS~~

~~The Contractor shall continuously maintain adequate protection of all work and materials, protect the property from injury or loss arising in connection with this Contract and adequately protect adjacent property as provided by law and the Contract Documents. The Contractor shall make good any damage, injury or loss, except to the extent:~~

~~1. Directly due to errors in the Contract Documents;~~

~~2. Caused by agents or employees of the Principal Representative; and,~~

~~3. Due to causes beyond the Contractor's control and not to fault or negligence; provided such damage, injury or loss would not be covered by the insurance required to be carried by the Contractor;~~

~~B. SAFETY PRECAUTIONS~~

~~The Contractor shall take all necessary precautions for the safety of employees on the Project, and shall comply with all applicable provisions of federal, State and municipal safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed. He or she shall erect and properly maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for the protection of workers and the public and shall post danger signs warning against the hazards created by such features of construction as protruding nails, hoists, well holes, elevator hatchways, scaffolding, window openings, stairways and falling materials; and he or she shall designate a responsible member of his or her organization on the Project, whose duty shall be the prevention of accidents. The name and position of any person so designated shall be reported to the Architect/Engineer by the Contractor.~~

~~The Contractor shall provide all necessary bracing, shoring and tying of all structures, decks and framing to prevent any structural failure of any material which could result in damage to property or the injury or death of persons; take all precautions to insure that no part of any structure of any description is loaded beyond its carrying capacity with anything that will endanger its safety at any time during the execution of this Contract; and provide for the adequacy and safety of all scaffolding and hoisting equipment. The Contractor shall not permit open fires within the building enclosure. The Contractor shall construct and maintain all necessary temporary drainage and do all pumping necessary to keep excavations and floors, pits and trenches free of water. The Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work, except as otherwise noted.~~

~~The Contractor shall take due precautions when obstructing sidewalks, streets or other public ways in any manner, and shall provide, erect and maintain barricades, temporary walkways, roadways, trench covers, colored~~

lights or danger signals and any other devices necessary or required to assure the safe passage of pedestrians and automobiles.

C. EMERGENCIES

In an emergency affecting the safety of life or of the Work or of adjoining property, the Contractor without special instruction or authorization from the Architect/Engineer or Principal Representative, is hereby permitted to act, at his or her discretion, to prevent such threatened loss or injury; and he or she shall so act, without appeal, if so authorized or instructed. Provided the Contractor has no responsibilities for the emergency, if the Contractor incurs additional cost not otherwise recoverable from insurance or others on account of any such emergency work, the Contract sum shall be equitably adjusted in accordance with Article 35, Changes In The Work.

ARTICLE 11. DRAWINGS AND SPECIFICATIONS ON THE WORK

The Contractor shall keep on the job site one copy of the Contract Documents in good order, including current copies of all Drawings and Specifications for the Work, and any approved Shop Drawings, Product Data or Samples, and as-built drawings. As-built drawings shall be updated weekly by the Contractor and Subcontractors to reflect actual constructed conditions including dimensioned locations of underground work and the Contractor's failure to maintain such updates may be grounds to withhold portions of payments otherwise due in accordance with Article 33, Payments Withheld. All such documents shall be available to the Architect/Engineer and representatives of the State. In addition, the

Contractor shall keep on the job site one copy of all approved addenda, Change Order s and requests for information issued for the Work.

The Contractor shall develop procedures to insure the currency and accuracy of as-built drawings and shall maintain on a current basis a log of requests for information and responses thereto, a Shop Drawing and Product Data submittal log, and a Sample submittal log to record the tatus of all necessary and required submittals.

ARTICLE 12. REQUESTS FOR INFORMATION AND SCHEDULES

A. REQUESTS FOR INFORMATION

The Architect/Engineer shall furnish additional instructions with reasonable promptness, by means of drawings or otherwise, necessary for the proper execution of the Work. All such drawings and instructions shall be consistent with the Contract Documents and reasonably inferable there from. The Architect/Engineer shall determine what additional instructions or drawings are necessary for the proper execution of the Work.

The Work shall be executed in conformity with such instructions and the Contractor shall do no work without proper drawings, specifications or instructions. If the Contractor believes additional instructions, specifications or drawings are needed for the performance of any portion of the Work, the Contractor shall give Notice of such need in writing

through a request for information furnished to the Architect/Engineer sufficiently in advance of the need for such additional instructions, specifications or drawings to avoid delay and to allow the Architect/Engineer a reasonable time to respond. The Contractor shall maintain a log of the requests for information and the responses provided.

B. SCHEDULES

1. SUBMITTAL SCHEDULES

Prior to filing the Contractor's first application for payment, a schedule shall be prepared which may be preliminary to the extent required, fixing the dates for the submission and initial review of required Shop Drawings, Product Data and Samples for the beginning of manufacture and installation of materials, and for the completion of the various parts of the Work. It shall be prepared so as to cause no delay in the Work or in the work of any other contractor. The schedule shall be subject to change from time to time in accordance with the progress of the Work, and it shall be subject to the review and approval by the Architect/Engineer. It shall fix the dates at which the various Shop Drawings Product Data and Samples will be required from the Architect/Engineer. The Architect/Engineer, after review and agreement as to the time provided for initial review, shall review and comment on the Shop Drawings, Product Data and Samples in accordance with that schedule. The schedule shall be finalized, prepared and submitted with respect to each of the elements of the Work in time to avoid delay, considering reasonable periods for review, manufacture or installation.

At the time the schedule is prepared, the Contractor, the Architect/Engineer and Principal Representative shall jointly identify the Shop Drawing, Product Data and Samples, if any, which the Principal Representative shall receive simultaneously with the Architect/Engineer for the purposes of owner coordination with existing facility standards and systems. The Contractor shall furnish a copy for the Principal Representative when so requested. Transmittal of Shop Drawings and Product Data copies to the Principal Representative shall be solely for the convenience of the Principal Representative and shall neither create nor imply responsibility or duty of review by the Principal Representative.

The Contractor may also, or at the direction of the Principal Representative at any time shall, prepare and maintain a schedule, which may also be preliminary and subject to change to the extent required, fixing the dates for the initial responses to requests for information or for detail drawings which will be required from the Architect/Engineer to allow the beginning of manufacture, installation of materials and for the completion of the various parts of the Work. The schedule shall be subject to review and approval by the Architect/Engineer. The Architect/Engineer shall, after review and agreement, furnish responses and detail drawings in accordance with that schedule. Any such schedule shall be prepared and approved in time to avoid delay, considering reasonable periods for review, manufacture or installation, but so long as the request for information schedule is being maintained, it shall not be deemed to transfer responsibility to the Contractor for errors or omissions in the Contract Documents where circumstances make timely review and performance impossible.

~~The Architect/Engineer shall not unreasonably withhold approval of the Contractor's schedules and shall inform the Contractor and the Principal Representative of the basis of any refusal to agree to the Contractor's schedules. The Principal Representative shall attempt to resolve any disagreements.~~

~~2. SCHEDULE OF VALUES~~

~~Within twenty-one (21) calendar days after the date of the Notice to Proceed, the Contractor shall submit to the Architect/Engineer and Principal Representative, for approval, and to the State Buildings Programs when specifically requested, a complete itemized schedule of the values of the various parts of the Work, as estimated by the Contractor, aggregating the total price. The schedule of values shall be in such detail as the Architect/Engineer or the Principal Representative shall require, prepared on forms acceptable to the Principal Representative. It shall, at a minimum, identify on a separate line each division of the Specifications including the general conditions costs to be charged to the Project. The Contractor shall revise and resubmit the schedule of values for approval when, in the opinion of the Architect/Engineer or the Principal Representative, such resubmittal is required due to changes or modifications to the Contract Documents or the Contract sum.~~

~~The total cost of each line item so separately identified shall, when requested by the Architect/Engineer or the Principal Representative, be broken down into reasonable estimates of the value of:~~

~~a. Material, which shall include the cost of material actually built into the Project plus any local sales or use tax paid thereon; and,~~

~~b. Labor and other costs.~~

~~The cost of subcontracts shall be incorporated in the Contractor's schedule of values, and when requested by the Architect/Engineer or the Principal Representative, shall be separately shown as line items.~~

~~The Architect/Engineer shall review the proposed schedules and approve it after consultation with the Principal Representative, or advise the Contractor of any required revisions within ten (10) days of its receipt. In the event no action is taken on the submittal within ten days, the Contractor may utilize the schedule of values as its submittal for payment until it is approved or until revisions are requested.~~

~~When the Architect/Engineer deems it appropriate to facilitate certification of the amounts due to the Contractor, further breakdown of subcontracts, including breakdown by labor and materials, may be directed.~~

~~This schedule of values, when approved, will be used in preparing Contractor's applications for payment on State Form SC-7.2, Application for Payment.~~

~~3. CONSTRUCTION SCHEDULES~~

~~Within twenty-one (21) calendar days after the date of the Notice to Proceed, the Contractor shall submit to the Architect/Engineer and the Principal Representative, and to the State Buildings Programs when specifically requested, on a form acceptable to them, an overall timetable of the construction schedule for the Project. Unless the Supplementary General Conditions or the Specifications allow scheduling with bar charts or other less sophisticated scheduling tools, the Contractor's schedule shall be a critical-path method (CPM) construction schedule. The CPM schedule shall start with the date of the Notice to Proceed and include submittals activities, the various construction activities, change order work (when applicable), close-out, testing, demonstration of equipment operation when called for in the Specifications, and acceptance. The CPM shall at a minimum correlate to the schedule of values line items and shall be cost loaded if requested by the Architect/Engineer or Principal Representative. The completion time shall be the time specified in the Agreement and all Project scheduling shall allocate float utilizing the full period available for construction as specified in the Agreement on State Form SC 6.13, without indication of early completion, unless such earlier completion is approved in writing by the Principal Representative and State Building Programs.~~

~~The time shown between the starting and completion dates of the various elements within the construction schedule shall represent one hundred per cent (100%) completion of each element.~~

~~All other elements of the CPM schedule shall be as required by the Specifications. In addition, the Contractor shall submit monthly updates of the construction schedule. These updates shall reflect the Contractor's "work in place" progress.~~

~~When requested by the Architect/Engineer, the Principal Representative or the State Buildings Programs, the Contractor shall revise the construction schedule to reflect changes in the schedule of values.~~

~~When the testing of materials is required by the Specifications, the Contractor shall also prepare and submit to the Architect/Engineer and the Principal Representative a schedule for testing in accordance with Article 14, Samples and Testing.~~

~~ARTICLE 13. SHOP DRAWINGS, PRODUCT DATA AND SAMPLES~~

~~A. SUBMITTAL PROCESS~~

~~The Contractor shall check and field verify all dimensions. The Contractor shall check, approve and submit to the Architect/Engineer in accordance with the schedule described in Article 12, Requests for Information and Schedules, all Shop Drawings, Product Data and Samples required by the specifications or required by the Contractor for the work of the various trades. All Drawings and Product Data shall contain identifying nomenclature and each submittal shall be accompanied by a letter of transmittal identifying in detail all enclosures. The number of copies of Shop Drawings and Product Data to be submitted shall be as specified in the Specifications and if no number is specified then three copies shall be submitted.~~

~~The Architect/Engineer shall review and comment on the Shop Drawings and Product Data within the time provided in the agreed upon schedule for conformance with information given and the design concept expressed in, or reasonably inferred from, the Contract Documents. The nature of all corrections to be made to the Shop Drawings and Product Data, if any, shall be clearly noted, and the submittals shall be returned to the Contractor for such corrections. If a change in the scope of the Work is intended by revisions requested to any Shop Drawings and Product Data, the Contractor shall be requested to prepare a change proposal in accordance with Article 35, Changes In The Work. On resubmitted Shop Drawings, Product Data or Samples, the Contractor shall direct specific attention in writing on the transmittal cover to revisions other than those corrections requested by the Architect/Engineer on any previously checked submittal. The Architect/Engineer shall promptly review and comment on, and return, the resubmitted items.~~

~~The Contractor shall thereafter furnish such other copies in the form approved by the Architect/Engineer as may be needed for the prosecution of the work.~~

~~B. FABRICATION AND ORDERING~~

~~Fabrication shall be started by the Contractor only after receiving approved Shop Drawings from the Architect/Engineer. Materials shall be ordered in accordance with approved Product Data. Work which is improperly fabricated, whether through incorrect Shop Drawings, faulty workmanship or materials, will not be acceptable.~~

~~C. DEVIATIONS FROM DRAWINGS OR SPECIFICATIONS~~

~~The review and comments of the Architect/Engineer of Shop Drawings, Product Data or Samples shall not relieve the Contractor from responsibility for deviations from the Drawings or Specifications, unless he or she has in writing called the attention of the Architect/Engineer to such deviations at the time of submission, nor shall it relieve the Contractor from responsibility for errors of any sort in Shop Drawings or Product Data. Review and comments on Shop Drawings or Product Data containing identified deviations from the Contract Documents shall not be the basis for a Change Order or a claim based on a change in the scope of the Work unless Notice is given to the Architect/Engineer and Principal Representative of all additional costs, time and other impacts of the identified deviation by bring it to their attention in writing at the time the submittals are made, and any subsequent change in the Contract sum or the Contract time shall be limited to cost, time and impacts so dentified.~~

~~D. CONTRACTOR REPRESENTATIONS~~

~~By preparing, approving, and/or submitting Shop Drawings, Product Data and Samples, the Contractor represents that the Contractor has determined and verified all materials, field measurements, and field construction criteria related thereto, and has checked and co-ordinated the information contained within each submittal with the requirements of the Work, the Project and the Contract Documents and prior reviews and approvals.~~

~~ARTICLE 14. SAMPLES AND TESTING~~

~~A. SAMPLES~~

~~The Contractor shall furnish for approval, with such promptness as to cause no delay in his or her work or in that of any other Contractor, all Samples as directed by the Architect/Engineer. The Architect/Engineer shall check and approve such Samples, with reasonable promptness, but only for conformance with the design intent of the Contract Documents and the Project, and for compliance with any submission requirements given in the Contract Documents.~~

~~B. TESTING-GENERAL~~

~~The Contractor shall provide such equipment and facilities as the Architect/Engineer may require for conducting field tests and for collecting and forwarding samples to be tested. Samples themselves shall not be incorporated into the Work after approval without the permission of the Architect/Engineer.~~

~~All materials or equipment proposed to be used may be tested at any time during their preparation or use. The Contractor shall furnish the required samples without charge and shall give sufficient Notice of the placing of orders to permit the testing thereof. Products may be sampled either prior to shipment or after being received at the site of the Work.~~

~~Tests shall be made by an accredited testing laboratory. Except as otherwise provided in the Specifications, sampling and testing of all materials, and the laboratory methods and testing equipment, shall be in accordance with the latest standards and tentative methods of the American Society of Testing Materials (ASTM). The cost of testing which is in addition to the requirements of the Specifications shall be paid by the Contractor if so directed by the Architect/Engineer, and the Contract sum shall be adjusted accordingly by Change Order; provided however, that whenever testing shows portions of the Work to be deficient, all costs of testing including that required to verify the adequacy of repair or replacement work shall be the responsibility of the Contractor.~~

~~C. TESTING -- CONCRETE AND SOILS~~

~~Unless otherwise specified or provided elsewhere in the Contract Documents, the Principal Representative will contract for and pay for the testing of concrete and for soils compaction testing through an independent laboratory or laboratories selected and approved by the Principal Representative. The Contractor shall assume the responsibility of arranging, scheduling and coordinating the concrete sample collection efforts and soils compaction efforts. Testing shall be performed in accordance with the requirements of the Specifications, and if no requirements are specified, the Contractor shall request instructions and testing shall be as directed by the Architect/Engineer or the soils engineer, as applicable, and in accordance with standard industry practices.~~

~~The Principal Representative and the Architect/Engineer shall be given reasonable advance notice of each concrete pour and reserve the right to either increase or decrease the number of cylinders or the frequency of tests.~~

~~Soil compaction testing shall be at random locations selected by the soils engineer. In general, soils compaction testing shall be as directed by the soils engineer and shall include all substrate prior to backfill or construction.~~

~~D. TESTING -- OTHER~~

~~Additional testing required by the Specifications will be accomplished and paid for by the Principal Representative in a manner similar to that for concrete and soils unless noted otherwise in the Specifications. In any case, the Contractor will be responsible for arranging, scheduling and coordinating additional tests. Where the additional testing will be contracted and paid for by the Principal Representative the Contractor shall give the Principal Representative not less than one month advance written Notice of the date the first such test will be required.~~

~~ARTICLE 15. SUBCONTRACTS~~

~~The Contractor shall, within twenty one (21) days after the date of the Notice of Award, submit to the Architect/Engineer, the Principal Representative and State Buildings Programs a preliminary list of Subcontractors. It shall be as complete as possible at the time, showing all known Subcontractors planned for the work. The list shall be supplemented as other Subcontractors are determined by the Contractor and any such supplemental list shall be submitted to the Architect/Engineer, the Principal Representative and State Buildings Programs not less than ten (10) days before the Subcontractor commences work.~~

~~The Contractor's list shall include those Subcontractors, if any, which the Contractor indicated in its bid would be employed for specific portions of the Work if such indication was requested in the bid documents issued by the State. The substitution of any Subcontractor listed in the Contractor's bid shall be justified in writing not less than ten (10) days after the date of the Notice of Award, and shall be subject to the approval of the Principal Representative. For reasons such as the Subcontractor's refusal to perform as agreed, subsequent unavailability or later discovered bid errors, or other similar reasons, but not including the availability of a lower Subcontract price, such substitution may be approved. The Contractor shall bear any additional cost incurred by such substitutions.~~

~~The Contractor shall not employ any Subcontractor that the Architect/Engineer, within seven (7) days after the date of receipt of the Contractor's list of Subcontractors or any supplemental list, objects to in writing as being unacceptable to either the Architect/Engineer, the Principal Representative or State Buildings Programs. If a Subcontractor is deemed unacceptable, the Contractor shall propose a substitute Subcontractor and the Contract sum shall be adjusted by any demonstrated difference between the Subcontractor's bids, except where the~~

Subcontractor has been debarred by the State or fails to meet qualifications of the Contract Documents to perform the work proposed.

The Contractor shall be fully responsible to the Principal Representative for the acts and omissions of Subcontractors and of persons either directly or indirectly employed by them. All instructions or orders in respect to work to be done by Subcontractors shall be given to the Contractor.

ARTICLE 16. RELATIONS OF CONTRACTOR AND SUBCONTRACTOR

The Contractor agrees to bind each Subcontractor to the terms of these General Conditions and to the requirements of the Drawings and Specifications, and any Addenda thereto, and also all the other Contract Documents, so far as applicable to the work of such Subcontractor. The Contractor further agrees to bind each Subcontractor to those terms of the General Conditions which expressly require that Subcontractors also be bound, including without limitation, requirements that Subcontractors waive all rights of subrogation, provide adequate general commercial liability and property insurance, automobile insurance and workers' compensation insurance as provided in Article 25, Insurance.

Nothing contained in the Contract Documents shall be deemed to create any contractual relationship whatsoever between any Subcontractor and the State of Colorado acting by and through its Principal Representative.

ARTICLE 17. MUTUAL RESPONSIBILITY OF CONTRACTORS

Should the Contractor cause damage to any separate contractor on the work, the Contractor agrees, upon due Notice, to settle with such contractor by agreement, if he or she will so settle. If such separate contractor sues the Principal Representative on account of any damage alleged to have been so sustained, the Principal Representative shall notify the Contractor, who shall defend such proceedings if requested to do so by Principal Representative. If any judgment against the Principal Representative arises there from, the Contractor shall pay or satisfy it and pay all costs and reasonable attorney fees incurred by the Principal Representative, in accordance with Article 52C, Indemnification, provided the Contractor was given due Notice of an opportunity to settle.

ARTICLE 18. SEPARATE CONTRACTS

The Principal Representative reserves the right to enter into other contracts in connection with the Project or the Contract. The Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall property connect and coordinate his or her work with theirs. If any part of the Contractor's work depends, for proper execution or results, upon the work of any other contractor, the Contractor shall inspect and promptly report to the Architect/Engineer any defects in such work that render it unsuitable for such proper execution and results. Failure of the Contractor to so inspect and report shall constitute an acceptance of the other contractor's work as fit and proper for the reception of work,

except as to defects which may develop in the other Contractor's work after the execution of the Contractor's work.

To insure the proper execution of subsequent work, the Contractor shall measure work already in place and shall at once report to the Architect/Engineer any discrepancy between the executed work and the Drawings.

ARTICLE 19. USE OF PREMISES

The Contractor shall confine apparatus, the storage of materials and the operations of workmen to limits indicated by law, ordinances, permits and any limits lines shown on the Drawings. The Contractor shall not unreasonably encumber the premises with materials.

The Contractor shall enforce all of the Architect/Engineer's instructions and prohibitions regarding, without limitation, such matters as signs, advertisements, fires and smoking.

ARTICLE 20. CUTTING, FITTING OR PATCHING

The Contractor shall do all cutting, fitting or patching of work that may be required to make its several parts come together properly and fit it to receive or be received by work of other Contractors shown upon, or reasonably inferred from, the Drawings and Specifications for the complete structure, and shall provide for such finishes to patched or fitted work as the Architect/Engineer may direct. The Contractor shall not endanger any work by cutting, excavating or otherwise altering the work and shall not cut or alter the work of any other Contractor save with the consent of the Architect/Engineer.

ARTICLE 21. UTILITIES

A. TEMPORARY UTILITIES

Unless otherwise specifically stated in the Specifications or on the Drawings, the Principal Representative shall be responsible for the locations of all utilities as shown on the Drawings or indicated elsewhere in the Specifications, subject to the Contractor's compliance with all statutory or regulatory requirements to call for utility locates. When actual conditions deviate from those shown the Contractor shall comply with the requirements of Article 37, Differing Site Conditions. The Contractor shall provide and pay for the installation of all temporary utilities required to supply all the power, light and water needed by him and other Contractors for their Work and shall install and maintain all such utilities in such manner as to protect the public and workmen and conform with any applicable laws and regulations. Upon completion of the work, he or she shall remove all such temporary utilities from the site. The Contractor shall pay for all consumption of power, light and water used by him or her and the other Contractors, without regard to whether such items are metered by temporary or permanent meters. The Superintendent shall have full authority over all trades and

~~Subcontractors at any tier to prevent waste. The cut-off date on permanent meters shall be either the agreed date of the Notice of Approval of Beneficial Occupancy or the date of the Notice of Substantial Completion of the Project, whichever shall be the earlier date.~~

~~B. PROTECTION OF EXISTING UTILITIES~~

~~Where existing utilities, such as water mains, sanitary sewers, storm sewers and electrical conduits, are shown on the Drawings, the Contractor shall be responsible for the protection thereof, without regard to whether any such utilities are to be relocated or removed as a part of the Work. If any utilities are to be moved, the moving must be conducted in such manner as not to cause undue interruption or delay in the operation of the same.~~

~~C. CROSSING OF UTILITIES~~

~~When new construction crosses highways, railroads, streets, or utilities under the jurisdiction of State, city or other public agency, public utility or private entity, the Contractor shall secure proper written permission before executing such new construction. The Contractor will be required to furnish a proper release before final acceptance of the Work.~~

~~ARTICLE 22. UNSUITABLE CONDITIONS~~

~~The Contractor shall not work at any time, or permit any work to be done, under any conditions contrary to those recommended by manufacturers or industry standards which are otherwise proper, unsuited for proper execution, safety and performance. Any cost caused by ill-timed work shall be borne by the Contractor unless the timing of such work shall have been directed by the Architect/Engineer or the Principal Representative, after the award of the Contract, and the Contractor provided Notice of any additional cost.~~

~~ARTICLE 23. TEMPORARY FACILITIES~~

~~A. OFFICE FACILITIES~~

~~The Contractor shall provide and maintain without additional expense for the duration of the Project temporary office facilities, as required and as specified, for his or her own use and the use of the Architect/Engineer, representatives of the Principal Representative and State Buildings Programs.~~

~~B. TEMPORARY HEAT~~

~~The Contractor shall furnish and pay for all the labor, facilities, equipment, fuel and power necessary to supply temporary heating, ventilating and air conditioning, except to the extent otherwise specified, and shall be responsible for the installation, operation, maintenance and removal of such facilities and equipment. Unless otherwise specified, the permanent HVAC system shall not be used for temporary heat in whole or in part. If the Contractor desires to put the permanent system into use, in whole or in part, the Contractor shall set it into operation~~

and furnish the necessary fuel and manpower to safely operate, protect and maintain that HVAC system. Any operation of all or any part of the permanent HVAC system including operation for testing purposes shall not constitute acceptance of the system, nor shall it relieve the Contractor of his or her one-year guarantee of the system from the date of the Notice of Substantial Completion of the entire Project, and if necessary due to prior operation, the Contractor shall provide manufacturers' extended warranties from the date of the Contractor's use prior to the date of the Notice of Substantial Completion. In the event a manufacturer's standard warranty runs from the date of first use and such first use occurs prior to the date of the Notice of Approval of Beneficial Occupancy and/or prior to the date of the Notice of Substantial Completion, and such occupancy date was not contemplated in the Contract Documents, the Contractor shall provide an extended manufacturer's warranty and any extended warranty cost shall be reimbursed to the Contractor; provided, however, that reimbursement shall only be due if the Contractor shall have given advance Notice of such additional cost and shall have given the Principal Representative a reasonable opportunity to decline such extended warranty coverage.

C. WEATHER PROTECTION

The Contractor shall, at all times, provide protection against weather, so as to maintain all work, materials, apparatus and fixtures free from injury or damages.

D. DUST PARTITIONS

If the Work involves work in an occupied existing building, the Contractor shall erect and maintain during the progress of the work, suitable dust-proof temporary partitions, or more permanent partitions as specified, to protect such building and the occupants thereof.

E. BENCH MARKS

The Contractor shall maintain any site bench marks provided by the Principal Representative and shall establish any additional benchmarks specified by the Architect/Engineer as necessary for the Contractor to layout the work and ascertain all grades and levels as needed.

F. SIGN

The Contractor shall erect and permit one 4' × 8' sign only at the site to identify the Project as specified or directed by the Architect/Engineer which shall be maintained in good condition during the life of the Project.

G. SANITARY PROVISION

The Contractor shall provide and maintain suitable, clean, temporary sanitary toilet facilities for any and all workmen engaged on the Work, for the entire construction period, in strict compliance with the requirement of all applicable codes, regulations, laws and ordinances, and no other facilities, new or existing, may be used by any person on the

Project. When the Project is complete the Contractor shall promptly remove them from the site, disinfect, and clean or treat the areas as required. If any new construction surfaces in the Project other than the toilet facilities provided for herein are soiled at any time, the entire areas so soiled shall be completely removed from the Project and rebuilt.

ARTICLE 24. CLEANING UP

The Contractor shall keep the building and premises free from all surplus material, waste material, dirt and rubbish caused by employees or work, and at the completion of the Work shall remove all such surplus material, waste material, dirt, and rubbish, as well as all tools, equipment and scaffolding, and shall wash and clean all window glass and plumbing fixtures, perform cleanup and cleaning required by the Specifications and leave all of the work clean unless more exact requirements are specified.

ARTICLE 25. INSURANCE

A. GENERAL LIABILITY, PROPERTY DAMAGE AND AUTOMOBILE

The Contractor shall procure and maintain comprehensive commercial general liability and property damage insurance and comprehensive automobile liability and property damage insurance as hereinafter specified, at his or her own expense, during the life of this Contract. This insurance shall include a provision preventing cancellation without forty-five (45) days' prior Notice by certified mail and shall state whether the coverage is "claims made" or "per occurrence". The Contractor shall obtain "per occurrence" insurance unless otherwise agreed in writing by the Principal Representative. A completed Certificate of Insurance shall be filed with State Buildings Programs within ten (10) days after the date of the Notice of Award, said Certificate to specifically state the inclusion of the coverages and provisions set forth herein.

This insurance must protect the Contractor from all claims for bodily injury, including death, and all claims for destruction of or damage to property, arising out of or in connection with, any operations under this Contract, whether such operations be by the Contractor or by any Subcontractor under him or anyone directly or indirectly employed by the Contractor or by a Subcontractor. All such insurance shall be written with limits and coverages as specified below and shall be written on a Comprehensive Form of Policy. In the event any of the hazards or exposures, normally listed in standard policies as "Exclusions", are involved or required under this Contract, then such hazards or exposures shall be covered and protection afforded under the policy and such exclusions (X), (c) and (u), as excerpted from standard policies, must be removed from the policy as listed below:

"(X) Injury to or destruction of any property arising out of blasting or explosion, other than the explosion of air or steam vessels, piping under pressure, prime movers, machinery of power transmitting equipment"

"(c) The collapse of or structural injury to any building or structure due to: (1) grading of land, excavating, burrowing, filling, backfilling, tunneling, pile driving, cofferdam work or caisson work; or (2) moving,

~~shoring, underpinning, raising or demolition of any building or structure, or removal or rebuilding of any structural support thereof;”~~
~~“(u) (1) injury to or destruction of wires, conduits, pipes, mains, sewers or other similar property, or any apparatus in connection therewith, below the surface of the ground, if such injury or destruction is caused by and occurs during the use of mechanical equipment for the purpose of grading of land, paving, excavating or drilling; or, (2) injury to or destruction of property at any time resulting there from.”~~

~~B. WORKERS' COMPENSATION INSURANCE~~

~~The Contractor shall procure and maintain Workers' Compensation Insurance at his or her own expense during the life of this Contract, including occupational disease provisions for all employees. This insurance, if issued by a private carrier, shall contain the same forty-five (45) days' Notice of cancellation as required in Article 25, Insurance for the Comprehensive General Liability Insurance. Evidence of such insurance shall be by the issuance of either a Certificate by the State Compensation Insurance Fund (or its successor) or, if issued by a private carrier, the completion of a Certificate of Insurance, and such Certificate shall be filed with the State Buildings Program. The Certificate shall be filed within ten (10) days after the date of the Notice of Award.~~

~~The Contractor shall also require each Subcontractor to furnish Workers' Compensation Insurance, including occupational disease provisions for all of the latter's employees, and to the extent not furnished, the Contractor accepts full liability and responsibility for Subcontractor's employees.~~

~~In cases where any class of employees engaged in hazardous work under this Contract at the site of the Project is not protected under the Workers' Compensation statute, the Contractor shall provide, and shall cause each Subcontractor to provide, adequate and suitable insurance for the protection of employees not otherwise protected.~~

~~C. BUILDER'S RISK INSURANCE~~

~~Unless otherwise expressly stated in the Supplementary General Conditions (e.g. where the State elects to provide for projects with a completed value of less than $1,000,000), the Contractor shall effect and maintain a policy of insurance to provide, at Contractor's expense, All Risk Builder's Risk Insurance Coverage which shall be in the dollar amount of the total Project for which the Work of this Contract is to be done. Such policy may have a deductible clause but not to exceed ten thousand dollars ($10,000.00).~~

~~The Contractor shall waive all rights of subrogation as regards the State of Colorado, its officials, its officers, its agents and its employees, all while acting within the scope and course of their employment. The Insurer shall not void such insurance policy by reason of the Contractor waiving said rights. The Contractor shall require all Subcontractors at any tier to similarly waive all such rights of subrogation and shall expressly include such a waiver in all subcontracts. The insurance shall remain in effect until the Date of Notice specified on the Notice of Acceptance, State Form SC-6.27, whether or not the building or some part~~

~~thereof is occupied in any manner prior to final acceptance of the Project, and shall remain fully in effect not withstanding any acceptance of the work of any Subcontractor on the Project. Such insurance shall be in an amount equal to the total insurable value of the construction. Upon request, the amount of such insurance shall be increased to include the cost of any additional work to be done on the Project, or materials or equipment to be incorporated in the Project, or materials or equipment to be incorporated in the Project, under other independent contracts let or to be let. In such event, the Contractor shall be reimbursed for this cost as his or her share of the insurance in the same ratio as the ratio of the insurance represented by such independent contracts let or to be let to the total insurance carried.~~

~~All such insurance shall insure the State of Colorado acting by and through its Principal Representative, the Contractor and his or her Subcontractors at any tier as their interests may appear. The insurance shall include a loss payable provision naming the State Controller, as loss payee.~~

~~The Principal Representative, with approval of the State Controller, shall have the power to adjust and settle any loss. Unless it is agreed otherwise, all monies received shall be applied first on rebuilding or repairing the destroyed or injured work.~~

~~The Certificate of Insurance shall specifically state the inclusion of the provisions herein above. A certificate for such insurance shall be filed with State Buildings Programs within ten (10) days after date of Notice of Award. The Insurance shall include a provision preventing cancellation without forty five (45) days' prior Notice in writing by certified mail.~~

~~D. ADDITIONAL MISCELLANEOUS INSURANCE PROVISIONS~~

~~Certificates of insurance and/or insurance policies required under this Contract shall be subject to the following stipulations and additional requirements:~~

~~1. The clause entitled "Other Insurance Provisions" contained in any policy including the State of Colorado as an additional named insured shall not apply to the State of Colorado;~~

~~2. Any and all deductibles or self-insured retentions contained in any insurance policy shall be assumed by and at the sole risk of the Contractor;~~

~~3. If any of the said policies shall fail at any time to meet the requirements of the Contract Documents as to form or substance, or if a company issuing any such policy shall be or at any time cease to be approved by the Division of Insurance of the State of Colorado, or be or cease to be in compliance with any stricter requirements of the Contract Documents, the Contractor shall promptly obtain a new policy, submit the same to State Building Programs for approval if requested, and submit a Certificate of Insurance as hereinbefore provided. Upon failure of the Contractor to furnish, deliver and maintain such insurance as provided herein, this Contract, in the sole discretion of the State of Colorado,~~

may be immediately declared suspended, discontinued, or terminated. Failure of the Contractor in obtaining and/or maintaining any required insurance shall not relieve the Contractor from any liability under the Contract, nor shall the insurance requirements be construed to conflict with the obligations of the Contractor concerning indemnification;

4. All requisite insurance shall be obtained from financially responsible insurance companies, authorized to do business in the State of Colorado and acceptable to the State;

5. Receipt, review or acceptance by the State of any insurance policies or certificates of insurance required by this Contract shall not be construed as a waiver or relieve the Contractor from its obligation to meet the insurance requirements contained in these General Conditions.

ARTICLE 26. CONTRACTOR'S PERFORMANCE AND PAYMENT BONDS

The Contractor shall furnish a Performance Bond and a Labor and Material Payment Bond on State Form s SC-6.22, Performance Bond, and SC-6.221, Labor and Material Payment Bond, or such other forms as State Buildings Programs may approve for the Project, executed by a corporate Surety authorized to do business in the State of Colorado and in the full amount of the Contract sum. The expense of these bonds shall be borne by the Contractor and the bonds shall be filed with State Buildings Programs.

If, at any time, a Surety on such a bond is found to be, or ceases to be in strict compliance with any qualification requirements of the Contract Documents or the bid documents, or loses its right to do business in the State of Colorado, another Surety will be required, which the Contractor shall furnish to State Buildings Programs within ten (10) days after receipt of Notice from the State or after the Contractor otherwise becomes aware of such conditions.

ARTICLE 27. LABOR AND WAGES

In accordance with laws of Colorado, C.R.S. § 8-17-101, et. seq., as amended, Colorado labor shall be employed to perform the work to the extent of not less than eighty percent (80%) of each type or class of labor in the several classifications of skilled and common labor employed on the Project. If the Federal Davis-Bacon Act shall be applicable to the Project, as indicated in Article 54B, Modification of Article 27, the minimum wage rates to be paid on the Project will be specified in the Contract Documents.

ARTICLE 28. ROYALTIES AND PATENTS

The Contractor shall be responsible for assuring that all rights to use of products and systems have been properly arranged and shall take such action as may be necessary to avoid delay, at no additional charge to the Principal Representative, where such right is challenged during the course of the work. The Contractor shall pay all royalties and license fees required to be paid and shall defend all suits or claims for infringement of any patent rights and shall save the State of Colorado harmless from loss on account thereof, in accordance with Article 52C, Indemnification;

provided, however, the Contractor shall not be responsible for such loss or defense for any copyright violations contained in the Contract Documents prepared by the Architect/Engineer or the Principal Representative of which the Contractor is unaware, or for any patent violations based on specified processes that the Contractor is unaware are patented or that the Contractor should not have had reason to believe were patented.

ARTICLE 29. ASSIGNMENT

Except as otherwise provided hereafter the Contractor shall not assign the whole or any part of this Contract without the written consent of the Principal Representative. This provision shall not be construed to prohibit assignments of the right to payment to the extent permitted by Section 4-9-406, C.R.S., as amended, provided that written Notice of assignment adequate to identify the rights assigned is received by the Principal Representative and the controller for the agency, department, or institution executing this Contract (as distinguished from the State Controller). Such assignment of the right to payment shall not be deemed valid until receipt by the Principal Representative and such controller and the Contractor assumes the risk that such written Notice of assignment is received by the Principal Representative and the controller for the agency, department, or institution involved. In case the Contractor assigns all or part of any moneys due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any moneys due or to become due to the Contractor shall be subject to all claims of all persons, firms, and corporations for services rendered or materials supplied for the performance of the work called for in this Contract, whether said service or materials were supplied prior to or after the assignment. Nothing in this Article shall be deemed a waiver of any other defenses available to the State against the Contractor or the assignee.

ARTICLE 30. CORRECTION OF WORK BEFORE ACCEPTANCE

The Contractor shall promptly remove from the premises all work or materials condemned or declared irreparably defective as failing to conform to the Contract Documents on receipt of written Notice from the Architect/Engineer or the Principal Representative, whether incorporated in the Work or not. If such materials shall have been incorporated in the Work, or if any unsatisfactory work is discovered, the Contractor shall promptly replace and re-execute his or her work in accordance with the requirements of the Contract Documents without expense to the Principal Representative, and shall also bear the expense of making good all work of other contractors destroyed or damaged by the removal or replacement of such defective material or work.

If the Contractor does not remove such condemned or irreparably defective work or material within a reasonable time, the Principal Representative may, after giving a second seven (7) day advance Notice to the Contractor and the Surety, remove them and may store the material at the Contractor's expense. The Principal Representative may accomplish the removal and replacement with its own forces or with another Contractor. If the

~~Contractor does not pay the expense of such removal and pay all storage charges within ten (10) days thereafter, the Principal Representative may, upon ten (10) days' written Notice, sell such material at auction or at private sale and account for the net proceeds thereof, after deducting all costs and expenses which should have been borne by the Contractor. If the Contractor shall commence and diligently pursue such removal and replacement before the expiration of the seven day period, or if the Contractor shall show good cause in conjunction with submittal of a revised CPM schedule showing when the work will be performed and why such removal of condemned work should be scheduled for a later date, the Principal Representative shall not proceed to remove or replace the condemned work.~~

~~Should any defective work or material be discovered during the process of construction, or should reasonable doubt arise as to whether certain material or work is in accordance with the Contract Documents, the value of such defective or questionable material or work shall not be included in any application for payment, or if previously included, shall be deducted by the Architect/Engineer from the next application submitted by the Contractor.~~

~~If the Contractor does not perform repair, correction and replacement of defective work, in lieu of proceeding by issuance of a Notice of intent to remove condemned work as outlined above, the Principal Representative may, not less than seven (7) days after giving the original written Notice of the need to repair, correct, or replace defective work, deduct all costs and expenses of replacement or correction as instructed by the Architect/Engineer from the Contractor's next application for payment in addition to the value of the defective work or material. The Principal Representative may also make an equitable deduction from the Contract sum by unilateral Change Order, in accordance with Article 33, Payments Withheld and Article 35, Changes in The Work.~~

~~If the Contractor disagrees with the Notice to remove work or materials condemned or declared irreparably defective, the Contractor may request facilitated negotiation of the issue and the Principal Representative's right to proceed with removal and to deduct costs and expenses of repair shall be suspended and tolled until such time as the parties meet and negotiate the issue~~

~~During construction, whenever the Architect/Engineer has advised the Contractor in writing, in the Specifications, by reference to Article 6, Architect/Engineer Decisions And Judgments, of these General Conditions or elsewhere in the Contract Documents of a need to observe materials in place prior to their being permanently covered up, it shall be the Contractor's responsibility to notify the Architect/Engineer at least forty-eight (48) hours in advance of such covering operation. If the Contractor fails to provide such notification, Contractor shall, at his or her expense, uncover such portions of the work as required by the Architect/Engineer for observation, and reinstall such covering after observation. When a covering operation is continued from day to day, notification of the commencement of a single continuing covering operation shall suffice for the activity specified so long as it proceeds regularly and without interruption from day to day, in which event the Contractor~~

shall coordinate with the Architect/Engineer regarding the continuing covering operation.

ARTICLE 31. APPLICATIONS FOR PAYMENTS

A. CONTRACTOR'S SUBMITTALS

On or before the first day of each month and no more than five days prior thereto, the Contractor may submit applications for payment for the work performed during such month covering the portion of the Work completed as of the date indicated, and payments on account of this Contract shall be due within thirty (30) days after the last day of the period for which payment is requested. The Contractor shall submit the application for payment to the Architect/Engineer on State forms SC-7.2, Certificate for Contractor's Payment, continuation forms, SC-7.2A and 7.2B if necessary, or such other format as the

State Buildings Programs shall approve, in an itemized format in accordance with the schedule of values or a cost loaded CPM when required, supported to the extent reasonably required by the Architect/Engineer or the Principal Representative by receipts or other vouchers, showing payments for materials and labor, prior payments and payments to be made to Subcontractors and such other evidence of the Contractor's right to payments as the Architect/Engineer or Principal Representative may direct.

If payments are made on account of materials not incorporated in the Work but delivered and suitably stored at the site, or at some other location agreed upon in writing, such payments shall be conditioned upon submission by the Contractor of bills of sale or such other procedure as will establish the Principal Representative's title to such material or otherwise adequately protect the Principal Representative's interests, and shall provide proof of insurance whenever requested by the Principal Representative or the Architect/Engineer, and shall be subject to the right to inspect the materials at the request of either the Architect/Engineer or the Principal Representative.

All applications for payment, except the final application, and the payments there under, shall be subject to correction in the next application rendered following the discovery of any error.

B. ARCHITECT/ENGINEER CERTIFICATION

In accordance with the Architect/Engineer's agreement with the Principal Representative, the Architect/Engineer after appropriate observation of the progress of the work shall certify to the Principal Representative the amount that the Contractor is entitled to, and forward the application to the Principal Representative. If the Architect/Engineer certifies an amount different from the amount requested or otherwise alters the Contractor's application for payment, a copy shall be forwarded to the Contractor.

If the Architect/Engineer is unable to certify all or portions of the amount requested due to the absence or lack of required supporting

~~evidence, the Architect/Engineer shall advise the Contractor of the deficiency.~~
~~If the deficiency is not corrected at the end of ten (10) days, the Architect/Engineer may either certify the remaining amounts properly supported to which the Contractor is entitled, or return the application for payment to the Contractor for revision with a written explanation as to why it could not be certified.~~

~~C. RETAINAGE WITHHELD~~

~~Unless otherwise provided in the Supplementary General Conditions, an amount equivalent to ten percent (10%) of the amount shown to be due the Contractor on each application for payment shall be withheld until fifty percent (50%) of the work required by the Contract has been performed. Thereafter, the remaining Certificates for Contractor's Payment (SC-7.2) shall be paid without retaining additional funds, if in the opinion of the Architect/Engineer and the Principal Representative, satisfactory progress is being made in the Work. The withheld percentage of the contract price of any such work, improvement, or construction shall be administered according to § 24-91-101, et seq., C.R.S., as amended, and except as provided in § 24-91-103, C.R.S., as amended, and Article 31D, shall be retained until the Work or discrete portions of the Work, have been completed satisfactorily, finally or partially accepted, and advertised for final settlement as further provided in Article 41.~~

~~D. RELEASE OF RETAINAGE~~

~~The Contractor may, for satisfactory and substantial reasons shown to the Principal Representative's satisfaction, make a written request to the Principal Representative and the Architect/Engineer for release of part or all of the withheld percentage applicable to the work of a Subcontractor which has completed the subcontracted work in a manner finally acceptable to the Architect/Engineer, the Contractor, and the Principal Representative. Any such request shall be supported by a written approval from the Surety furnishing the Contractor's bonds and any surety that has provided a bond for the Subcontractor. The release of any such withheld percentage shall be further supported by such other evidence as the Architect/Engineer or the Principal Representative may require, including but not limited to, evidence of prior payments made to the Subcontractor, copies of the Subcontractor's contract with the Contractor, any applicable warranties, as-built information, maintenance manuals and other customary close-out documentation. Neither the Principal Representative nor the Architect Engineer shall be obligated to review such documentation nor shall they be deemed to assume any obligations to third parties by any review undertaken.~~

~~The Contractor's obligation under these General Conditions to guarantee work for one year from the date of the Notice of Substantial Completion or the date of any Notice of Partial Substantial Completion of the applicable portion or phase of the Project, shall be unaffected by such partial release; unless a Notice of Partial Substantial Completion is issued for the work subject to the release of retainage.~~

~~Any rights of the Principal Representative which might be terminated by or from the date of any final acceptance of the Work, whether at common law or by the terms of this Contract, shall not be affected by such partial release of retainage prior to any final acceptance of the entire Project.~~

~~The Contractor remains fully responsible for the Subcontractor's work and assumes any risk that might arise by virtue of the partial release to the Subcontractor of the withheld percentage, including the risk that the Subcontractor may not have fully paid for all materials, labor and equipment furnished to the Project.~~

~~If the Principal Representative considers the Contractor's request for such release satisfactory and supported by substantial reasons, the Architect/Engineer shall make a "final inspection" of the applicable portion of the Project to determine whether the Subcontractor's work has been completed in accordance with the Contract Documents. A final punch list shall be made for the Subcontractor's work and the procedures of Article 41, Completion, Final Inspection, Acceptance and Settlement, shall be followed for that portion of the work, except that advertisement of the intent to make final payment to the Subcontractor shall be required only if the Principal Representative has reason to believe that a supplier or Subcontractor to the Subcontractor for which the request is made, may not have been fully paid for all labor and materials furnished to the Project.~~

~~ARTICLE 32. CERTIFICATES FOR PAYMENTS~~

~~State Form SC-7.2, Certificate For Contractor's Payment, and its continuation detail sheets, when submitted, shall constitute the Certificate of Contractor's Application for Payment, and shall be a representation by the Contractor to the Principal Representative that the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and materials for which payment is requested have been incorporated into the Project except as noted in the application. If requested by the Principal Representative the Certificate of Contractor's Application for Payment shall be sworn under oath and notarized.~~

~~ARTICLE 33. PAYMENTS WITHHELD~~

~~The Architect/Engineer, the Principal Representative or State Buildings Programs may withhold, or on account of subsequently discovered evidence nullify, the whole or any part of any application on account of, but not limited to any of the following:~~

~~1. Defective work not remedied;~~

~~2. Claims filed or reasonable evidence indicating probable filing of claims;~~

~~3. Failure of the Contractor to make payments to Subcontractors for material or labor;~~

~~4. A reasonable doubt that the Contract can be completed for the balance of the contract price then unpaid;~~

5. Damage or injury to another contractor or any other person, persons or property except to the extent of coverage by a policy of insurance;

6. Failure to obtain necessary permits or licenses or to comply with applicable laws, ordinances, codes, rules or regulations or the directions of the Architect/Engineer;

7. Failure to submit a monthly construction schedule;

8. Failure of the Contractor to keep work progressing in accordance with the time schedule;

9. Failure to keep a superintendent on the work;

10. Failure to maintain as built drawings of the work in progress;

11. Unauthorized deviations by the Contractor from the Contract Documents; or

12. On account of liquidated damages.

In addition, the Architect Engineer, Principal Representative or State Buildings Programs may withhold or nullify the whole or any part of any application for any reason noted elsewhere in these General Conditions of the Contract. Nullification shall mean reduction of amounts shown as previously paid on the application. The amount withheld or nullified may be in such amount as the Architect/Engineer or the Principal Representative estimates to be required to allow the State to accomplish the Work, cure the failure and cover any damages or injuries, including an allowance for attorneys fees and costs where appropriate. When the grounds for such withholding or nullifying are removed, payment shall be made for the amounts thus withheld or nullified on such grounds.

ARTICLE 34. DEDUCTIONS FOR UNCORRECTED WORK

If the Architect/Engineer and the Principal Representative deem it inexpedient to correct work injured or not performed in accordance with the Contract Documents, the Principal Representative may, after consultation with the Architect/Engineer and ten (10) days' Notice to the Contractor of intent to do so, make reasonable reductions from the amounts otherwise due the Contractor on the next application for payment. Notice shall specify the amount or terms of any contemplated reduction. The Contractor may during this period elect to correct or perform the work. If the Contractor does not elect to correct or perform the work, an equitable deduction from the Contract sum shall be made by Change Order, in accordance with Article 35, Changes In The Work, unilaterally if necessary. If either party elects facilitation of this issue after Notice is given, the ten-day notice period shall be extended and tolled until facilitation has occurred.

ARTICLE 35. CHANGES IN THE WORK

~~The Principal Representative, or such other Procurement Officer as the Principal Representative may designate, without invalidating the Agreement, and with the approval of State Buildings Programs and the State Controller, may order extra work or make changes with or without the consent of the Contractor as hereafter provided, by altering, adding to or deducting from the Work, the Contract sum being adjusted accordingly. All such changes in the Work shall be within the general scope of and be executed under the conditions of the Contract, except that any claim for extension of time made necessary due to the change or any claim of other delay or other impacts caused by or resulting from the change in the Work shall be presented by the Contractor and adjusted by Change Order to the extent known at the time such change is ordered and before proceeding with the extra or changed work. Any claims for extension of time or of delay or other impacts, and any costs associated with extension of time, delay or other impacts, which are not presented before proceeding with the change in the Work, and which are not adjusted by Change Order to the extent known, shall be waived.~~

~~The Architect/Engineer shall have authority to make minor changes in the Work, not involving extra cost, and not inconsistent with the intent of the Contract Documents, but otherwise, except in an emergency endangering life or property, no extra work or change in the Contract Documents shall be made unless by~~
~~1) a written Change Order, approved by the Principal Representative, State Buildings Programs, and the State Controller prior to proceeding with the changed work; or 2) by an Emergency Field Change Order approved by the Principal Representative and State Buildings Programs as hereafter provided in Article 35C, Emergency Field Ordered Changed Work; or 3) by an allocation in writing of any allowance already provided in the encumbered contract amount, the Contract sum being later adjusted to decrease the Contract sum by any unallocated or unexpended amounts remaining in such allowance. No change to the Contract sum shall be valid unless so ordered.~~

~~A. THE VALUE OF CHANGED WORK~~

~~1. The value of any extra work or changes in the Work shall be determined by agreement in one or more of the following ways:~~

~~a. By estimate and acceptance of a lump-sum amount;~~

~~b. By unit prices specified in the Agreement, or subsequently agreed upon, that are extended by specific quantities;~~

~~c. By actual cost plus a fixed fee in a lump sum amount for profit, overhead and all indirect and off-site home office costs, the latter amount agreed upon in writing prior to starting the extra or changed work.~~

~~2. Where the Contractor and the Principal Representative cannot agree on the value of extra work, the Principal Representative may order the Contractor to perform the changes in the Work and a Change Order may be unilaterally issued based on an estimate of the change in the Work prepared by the Architect/Engineer. The value of the change in the Work shall be the Principal Representative's determination of the amount of~~

equitable adjustment attributable to the extra work or change. The Principal Representative's determination shall be subject to appeal by the Contractor pursuant to the claims process in Article 36, Claims. The Principal Representative is the Procurement Officer for purposes of all of the remedies provisions of the Contract.

3. Except as otherwise provided in Article 35B, Detailed Breakdown, below, the Cost Principles of the Colorado Procurement Rules in effect on the date of this Contract, pursuant to § 24-107-10, C.R.S., as amended, shall govern all Contract changes.

B. DETAILED BREAKDOWN

In all cases where the value of the extra or changed work is not known based on unit prices in the Contractor's bid or the Agreement, a detailed change proposal shall be submitted by the Contractor on a Change Order Proposal (SC-6.312), or in such other format as the State Buildings Program approves, with which the Principal Representative may require an itemized list of materials, equipment and labor, indicating quantities, time and cost for completion of the changed work.

Such detailed change proposals shall be stated in lump sum amounts and shall be supported by a separate breakdown, which shall include estimates of all or part of the following when requested by the Architect/Engineer or the Principal Representative:

1. Materials, indicating quantities and unit prices including taxes and delivery costs if any (separated where appropriate into general, mechanical and electrical and/or other Subcontractors' work; and the Principal Representative may require in its discretion any significant subcontract costs to be similarly and separately broken down).

2. Labor costs, indicating hourly rates and time and labor burden to include Social Security and other payroll taxes such as unemployment, benefits and other customary burdens.

3. Costs of project management time and superintendence time of personnel stationed at the site, and other field supervision time, but only where a time extension, other than a weather delay, is approved as part of the Change Order, and only where such project management time and superintendence time is directly attributable to and required by the change; provided however that additional cost of on-site superintendence shall be allowable whenever in the opinion of the Architect/Engineer the impact of multiple change requests to be concurrently performed will result in inadequate levels of supervision to assure a proper result unless additional superintendence is provided.

4. Construction equipment (including small tools). Expenses for equipment and fuel shall be based on customary commercially reasonable rental rates and schedules. Equipment and hand tool costs shall not include the cost of items customarily owned by workers.

5. Workers' compensation costs, if not included in labor burden.

6. The cost of commercial general liability and property damage insurance premiums but only to the extent charged the Contractor as a result of the changed work.

7. Overhead and profit, as hereafter specified.

8. Builder's risk insurance premium costs.

9. Bond premium costs.

10. Testing costs not otherwise excluded by these General Conditions.

11. Subcontract costs.

Unless modified in the Supplementary General Conditions, overhead and profit shall not exceed the percentages set forth in the table below.

OVERHEAD

PROFIT

COMMISSION

To the Contractor or to Subcontractors for the portion of work performed with their own forces:

10%

5%

To the Contractor or to Subcontractors for work performed by others at a tier immediately below either of them:

5%

5%

Overhead shall include: a) insurance premium for policies not purchased for the Project and itemized above, b) home office costs for office management, administrative and supervisory personnel and assistants, c) estimating and change order preparation costs, d) incidental job burdens, e) legal costs, f) data processing costs, g) interest costs on capital, h) general office expenses except those attributable to increased rental expenses for temporary facilities, and all other indirect costs, but shall not include the Social Security tax and other direct labor burdens. The term “work” as used in the proceeding table shall include labor, materials and equipment and the “Commission” shall include all costs and profit for carrying the subcontracted work at the tiers below except direct costs as listed in items 1 through 11 above if any.

On proposals for work involving both additions and credits in the amount of the Contract sum, the overhead and profit will be allowed on the net increase only. On proposals resulting in a net deduct to the amount of the

~~Contract sum, profit on the deducted amount shall be returned to the Principal Representative at fifty percent (50%) of the rate specified. The inadequacy of the profit specified shall not be a basis for refusal to submit a proposal.~~

~~Except in the case of Change Order s or Emergency Field Change Orders agreed to on the basis of a lump sum amount or unit prices as described in paragraphs 35A1 and 35A2 above, The Value of Changed Work, the Contractor shall keep and present a correct and fully auditable account of the several items of cost, together with vouchers, receipts, time cards and other proof of costs incurred, summarized on a Change Order form (SC-6.31) using such format for supporting documentation as the Principal Representative and State Buildings Programs approve. This requirement applies equally to work done by Subcontractors. Only auditable costs shall be reimbursable on Change Orders where the value is determined on the basis of actual cost plus a fixed fee pursuant to paragraph 35A3 above, or where unilaterally determined by the Principal Representative on the basis of an equitable adjustment in accordance with the Procurement Rules, as described above in Article 35A, The Value Of Changed Work.~~

~~Except for proposals for work involving both additions and credits, changed work shall be adjusted and considered separately for work either added or omitted. The amount of adjustment for work omitted shall be estimated at the time it is directed to be omitted, and when reasonable to do so, the agreed adjustment shall be reflected on the schedule of values used for the next Contractor's application for payment.~~

~~The Principal Representative reserves the right to contract with any person or firm other than the Contractor for any or all extra work; however, unless specifically required in the Contract Documents, the Contractor shall have no responsibility without additional compensation to supervise or coordinate the work of persons or firms separately contracted by the Principal Representative.~~

~~C. EMERGENCY FIELD CHANGE ORDERED WORK~~

~~The Principal Representative, without invalidating the Agreement, and with the approval of State Buildings Programs and without the approval of the State Controller, may order extra work or make changes in the case of an emergency that is a threat to life or property or where the likelihood of delays in processing a normal Change Order will result in substantial delays and or significant cost increases for the Project. Emergency Field Orders are not to be used solely to expedite normal Change Order processing absent a clear showing of a high potential for significant and substantial cost or delay. Such changes in the Work may be directed through issuance of an Emergency Field Change Order signed by the Contractor, the Principal Representative (or by a designee specifically appointed to do so in writing), and approved by the Director of State Buildings Program or his or her delegate. The change shall be directed using a State Change Order form (SC-6.31), modified with the words "Emergency Field Change Order" at the top.~~

~~If the amount of the adjustment of the Contract price and time for completion can be determined at the time of issuance of the Emergency~~

~~Field Change Order, those adjustments shall be reflected on the face of the Emergency Field Change Order. Otherwise, the Emergency Field Change Order shall reflect a not to exceed (NTE) amount for any schedule adjustment (increasing or decreasing the time for completion) and an NTE amount for any adjustment to Contract sum, which NTE amount shall represent the maximum amount of adjustment to which the Contractor will be entitled, including direct and indirect costs of changed work, as well as any direct or indirect costs attributable to delays, inefficiencies or other impacts arising out of the change. Emergency Field Change Orders directed in accordance with this provision need not bear the approval signatures of the State Controller.~~

~~On Emergency Field Change Order s where the price and schedule have not been finally determined, the Contractor shall submit final costs for adjustment as soon as practicable. No later than seven (7) days after issuance, except as otherwise permitted, and every seven days thereafter, the Contractor shall report all costs to the Principal Representative and the Architect/Engineer. Weekly cost reports and the final adjustment of the Emergency Field Change Orders amount and the adjustment to the Project time for completion shall be prepared in accordance with the procedures described in Article 35A, The Value of Changed Work, and B, Detailed Breakdown, above. Unless otherwise provided in writing signed by the Director of State Buildings Programs to the Principal Representative and the Contractor, describing the extent and limits of any greater authority, individual Emergency Field Change~~

~~Orders shall not be issued for more than $25,000, nor shall the cumulative value of Emergency Field Change Orders exceed an amount of $100,000.~~

~~D. APPROPRIATION LIMITATIONS — § 24-91-103.6, C.R.S., as amended~~

~~The amount of money appropriated, as shown on the Agreement (SC 6.21), is equal to or in excess of the Contract amount. No Change Order, Emergency Field Change Order, or other type of order or directive shall be issued by the Principal Representative, or any agent acting on his or her behalf, which directs additional compensable work to be performed, which work causes the aggregate amount payable under the Contract to exceed the amount appropriated for the original Contract, as shown on the Agreement (SC 6.13), unless one of the following occurs: (1) the Contractor is provided written assurance from the Principal Representative that sufficient additional lawful appropriations exist to cover the cost of the additional work; or (2) the work is covered by a contractor remedy provision under the Contract, such as a claim for extra cost. By way of example only, no assurance is required for any order, directive or instruction by the Architect/Engineer or the Principal Representative to perform work which is determined to be within the performance required by the Contract Documents; the Contractor's remedy shall be as described elsewhere in these General Conditions.~~

~~Written assurance shall be in the form of an Amendment to the Contract reciting the source and amount of such appropriation available for the Project. No remedy granting provision of this Contract shall obligate the Principal Representative to seek appropriations to cover costs in excess of the amounts recited as available to pay for the work to be performed.~~

~~ARTICLE 36. CLAIMS~~

~~It is the intent of these General Conditions to provide procedures for speedy and timely resolution of disagreements and disputes at the lowest level possible. In the spirit of on the job resolution of job site issues, the parties are encouraged to use the partnering processes of Article 2D, Partnering, Communications and Cooperation, before turning to the more formal claims processes described in this Article 36, Claims. The use of non-binding dispute resolution, whether through the formal processes described in Article 39, Non-Binding Dispute Resolution -- Facilitated Negotiations, or through less formal alternative processes developed as part of a partnering plan, are also encouraged. Where such process cannot resolve the issues in dispute, the claims process that follows is intended to cause the issues to be presented, decided and where necessary, documented in close proximity to the events from which the issues arise. To that end, and in summary of the remedy granting process that follows commencing with the next paragraph of thisArticle 36, Claims, the Contractor shall 1) first, seek a decision by the Architect/Engineer, and 2) shall second, informally present the claim to Principal Representative as described hereafter, and 3) failing resolution in the field, give Notice of intent to exercise statutory rights of review of a formal contract controversy, and 4) seek resolution outside the Contract as provided by the Procurement Code.~~

~~If the Contractor claims that any instructions, by detailed drawings, or otherwise, or any other act or omission of the Architect/Engineer or Principal Representative affecting the scope of the Contractor's work, involve extra cost, extra time or changes in the scope of the Work under this Contract, the Contractor shall have the right to assert a claim for such costs or time, provided that before either proceeding to execute such work (except in an emergency endangering life or property), or filing a Notice of claim, the Contractor shall have obtained or requested a written decision of the Architect/Engineer following the procedures as provided in Article 6A and B, Architect/Engineer Decisions and Judgments, respectively; provided, however, that in the case of a directed change in the Work pursuant to Article 36A4, no written judgment or decision of the Architect/Engineer is required. If the Contractor is delayed by the lack of a response to a request for a decision by the Architect/Engineer, the Contractor shall give Notice in accordance with Article 38, Delays And Extensions Of Time.~~

~~Unless it is the Architect/Engineer's judgment and determination that the work is not included in the performance required by the Contract Documents, the Contractor shall proceed with the work as originally directed. Where the Contractor's claim involves a dispute concerning the value of work unilaterally directed pursuant to Article 35A4 the Contractor shall also proceed with the work as originally directed while his or her claim is being considered.~~

~~The Contractor shall give the Principal Representative and the Architect/Engineer Notice of any claim promptly after the receipt of the Architect/Engineer's decision, but in no case later than three (3) business days after receipt of the Architect/Engineer's decision (or no~~

later than ten (10) days from the date of the Contractor's request for a decision when the Architect/Engineer fails to decide as provided in Article 6). The Notice of claim shall state the grounds for the claim and the amount of the claim to the extent known in accordance with the procedures of Article 35, Changes In The Work. The period in which Notice must be given may be extended by the Principal Representative if requested in writing by the Contractor with good cause shown, but any such extension to be effective shall be in writing.

The Principal Representative shall respond in writing, with a copy to the Architect/Engineer, within a reasonable time, and except where a request for facilitation of negotiation has been made as hereafter provided, in no case later than seven (7) business days (or at such other time as the Contractor and Principal Representative agree) after receipt of the Contractor's Notice of claim regarding such instructions or alleged act or omission. If no response to the Contractor's claim is received within seven (7) business days of Contractor's Notice (or at such other time as the Contractor and Principal Representative agree) and the instructions have not been retracted, it shall be deemed that the Principal Representative has denied the claim.

The Principal Representative may grant or deny the claim in whole or in part, and a Change Order shall be issued if the claim is granted. To the extent any portion of claim is granted where costs are not clearly shown, the Principal Representative may direct that the value of that portion of the work be determined by any method allowed in Article 35A, The Value Of Changed Work. Except in the case of a deemed denial, the Principal Representative shall provide a written explanation regarding any portion of the Contractor's claim that is denied.

If the Contractor disagrees with the Principal Representative 's judgment and determination on the claim and seeks an equitable adjustment of the Contract sum or time for performance, he or she shall give Notice of intent to exercise his or her statutory right to seek a decision on the contract controversy within ten (10) days of receipt of the Principal Representative's decision denying the claim. A “contract controversy,” as such term is used in the Colorado Procurement Code, § 24-109-106, C.R.S., shall not arise until the initial claim process described above in this Article 36 has been properly exhausted by the Contractor. The Contractor's failure to proceed with work directed by the Architect/Engineer or to exhaust the claim process provided above in this Article 36, shall constitute an abandonment of the claim by the Contractor and a waiver of the right to contest the decision in any forum.

At the time of filing the Notice of intent to exercise his or her statutory right to seek a decision on the contract controversy, the Contractor may request that the Principal Representative defer a decision on the contract controversy until a later date or until the end of the Project. If the Principal Representative agrees, he or she shall so advise the Contractor in writing. If no such request is made, or if the Principal Representative does not agree to such a request, the Principal Representative shall render a written decision within twenty (20) business days and advise the Contractor of the reasons for any denial. Unless

~~the claim has been decided by the Principal Representative (as opposed to delegees of the Principal Representative), the person who renders the decision on this statutory contract controversy shall not be the same person who decided the claim. To the extent any portion of the contract controversy is granted where costs are not clearly shown, the Principal Representative may direct that the value of that portion of the work be determined by any method allowed in Article 35A, The Value Of Changed Work. In the event of a denial the Principal Representative shall give Notice to the Contractor of his or her right to administrative and judicial reviews as provided in the Colorado Procurement Code, § 24-109-201 et seq, C.R.S., as amended. If no decision regarding the contract controversy is issued within twenty (20) business days of the Contractor's giving Notice (or such other date as the Contractor and Principal Representative have agreed), and the instructions have not been retracted or the alleged act or omission have not been corrected, it shall be deemed that the Principal Representative has ruled by denial on the contract controversy. Except in the case of a deemed denial, the Principal Representative shall provide an explanation regarding any portion of the contract controversy that involves denial of the Contractor's claim.~~

~~Either the Contractor or the Principal Representative may request facilitation of negotiations concerning the claim or the contract controversy, and if requested, the parties shall consult and negotiate before the Principal Representative decides the issue. Any request for facilitation by the Contractor shall be made at the time of the giving of Notice of the claim or Notice of the contract controversy. Facilitation shall extend the time for the Principal Representative to respond by commencing the applicable period at the completion of the facilitated negotiation, which shall be the last day of the parties' meeting, unless otherwise agreed in writing.~~

~~Disagreement with the decision of the Architect Engineer, or the decision of the Principal Representative to deny any claim or denying the contract controversy, shall not be grounds for the Contractor to refuse to perform the work directed or to suspend or terminate performance. During the period that any claim or contract controversy decision is pending under this Article 36, Claims, the Contractor shall proceed diligently with the work directed.~~

~~In all cases where the Contractor proceeds with the work and seeks equitable adjustment by filing a claim and or statutory appeal, the Contractor shall keep a correct account of the extra cost, in accordance with Article 35B, Detailed Breakdown supported by receipts. The Principal Representative shall be entitled to reject any claim or contract controversy whenever the foregoing procedures are not followed and such accounts and receipts are not presented.~~

~~The payments to the Contractor in respect of such extra costs shall be limited to reimbursement for the current additional expenditure by the Contractor made necessary by the change in the work, plus a reasonable amount for overhead and profit, determined in accordance with Article 35B, Detailed Breakdown, determined solely with reference to the additional work, if any, required by the change.~~

~~ARTICLE 37. DIFFERING SITE CONDITIONS~~

~~A. NOTICE IN WRITING~~

~~The Contractor shall promptly, and where possible before conditions are disturbed, give the Architect/Engineer and the Principal Representative Notice in writing of:~~

~~1. subsurface or latent physical conditions at the site differing materially from those indicated in or reasonably assumed from the information provided in the Contract Documents; and,~~

~~2. unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents.~~

~~The Architect/Engineer shall promptly investigate the conditions, and if it is found that such conditions do materially so differ and cause an increase or decrease in the Contractor's costs of performance of any part of the work required by the Contract Documents, whether or not such work is changed as a result of such conditions, an equitable adjustment shall be made and the Contract sum shall be modified in accordance with Article 35, Changes In The Work.~~

~~If the time required for completion of the work affected by such materially differing conditions will extend the work on the critical path as indicated on the CPM schedule, the time for completion shall also be equitably adjusted.~~

~~B. LIMITATIONS~~

~~No claim of the Contractor under this clause shall be allowed unless the Contractor has given the Notice required in Article 37A, Notice in Writing, above. The time prescribed for presentation and adjustment in Articles 36, Claims and 38, Delays And Extensions Of Time, shall be reasonably extended by the State to the extent required by the nature of the differing conditions; provided, however, that even when so extended no claim by the Contractor for an equitable adjustment hereunder shall be allowed if not quantified and presented prior to the date the Contractor requests a final inspection pursuant to Article 41A, Notice Of Completion.~~

~~ARTICLE 38. DELAYS AND EXTENSIONS OF TIME~~

~~If the Contractor is delayed at any time in the progress of the Work by any act or neglect of the State of Colorado or the Architect/Engineer, or of any employee or agent of either, or by any separately employed Contractor or by strikes, lockouts, fire, unusual delay in transportation, unavoidable casualties or any other causes beyond the Contractor's control, including weather delays as defined below, the time of Completion of the Work shall be extended for a period equal to such portion of the period of delays directly affecting the completion of the~~

~~Work as the Contractor shall be able to show he or she could not have avoided by the exercise of due diligence.~~

~~The Contractor shall provide Notice in writing to the Architect/Engineer, the Principal Representative and State Buildings Programs within three (3) business days from the beginning of such delay and shall file a written claim for an extension of time within seven (7) business days after the period of such delay has ceased, otherwise, any claim for an extension of time is waived.~~

~~Provided that the Contractor has submitted reasonable schedules for approval when required by Article 12, Requests for Information and Schedules, if no schedule is agreed to fixing the dates on which the responses to requests for information or detail drawings will be needed, or Shop Drawings, Product Data or Samples are to be reviewed as required or allowed by Article 12B, Schedules, no extension of time will be allowed for the Architect/Engineer's failure to furnish such detail drawings as needed, or for the failure to initially review Shop Drawings, Product Data or Samples, except in respect of that part of any delay in furnishing detail drawings or instructions extending beyond a reasonable period after written demand for such detailed drawings or instructions is received by the Architect/Engineer. In any event, any claim for an extension of time for such cause will be recognized only to the extent of delay directly caused by failure to furnish detail drawings or instructions or to review Shop Drawings, Product Data or Samples pursuant to schedule, after such demand.~~

~~All claims for extension of time due to a delay claimed to arise or result from ordered changes in the scope of the Work, or due to instructions claimed to increase the scope of the Work, shall be presented to the Architect/Engineer, the Principal Representative and State Buildings Programs as part of a claim for extra cost, if any, in accordance with Article 36, Claims, and in accordance with the Change Order procedures required by Article 35, Changes In The Work.~~

~~Except as otherwise provided in this paragraph, no extension of time shall be granted when the Contractor has failed to utilize a CPM schedule or otherwise identify the Project's critical path as specified in Article 12, Requests for Information and Schedules, or has elected not to do so when allowed by the Supplementary General Conditions or the Specifications to use less sophisticated scheduling tools, or has failed to maintain such a schedule. Delay directly affecting the completion of the Work shall result in an extension of time only to the extent that completion of the Work was affected by impacts to the critical path shown on Contractor's CPM schedule. Where the circumstances make it indisputable in the opinion of the Architect/Engineer that the delay affected the completion of the Work so directly that the additional notice of the schedule impact by reference to a CPM schedule was unnecessary, a reasonable extension of time may be granted.~~

~~Extension of the time for completion of the Work will be granted for delays due to weather conditions only when the Contractor demonstrates that such conditions were more severe and extended than those reflected by~~

~~the ten-year average for the month, as evidenced by the Climatological Data, U. S. Department of Commerce, for the Project area.~~

~~Extensions of the time for completion of the Work due to weather will be granted on the basis of one and three tenths (1.3) calendar days for every day that the Contractor would have worked but was unable to work, with each separate extension figured to the nearest whole calendar day.~~

~~For weather delays and delays caused by events, acts or omissions not within the control of the Principal Representative or any person acting on the Principal Representative's behalf, the Contractor shall be entitled to an extension of time only and shall not be entitled to recovery of additional cost due to or resulting from such delays. This Article does not, however, preclude the recovery of damages for delay by either party under other provisions in the Contract Documents.~~

~~ARTICLE 39. NON-BINDING DISPUTE RESOLUTION -- FACILITATED NEGOTIATIONS~~

~~The Contractor and Principal Representative agree to designate one or more mutually acceptable persons willing and able to facilitate negotiations and communications for the resolution of conflicts, disagreements or disputes between them at the specific request of either party with regard to any Project decision of either of them or any decision of the Architect/Engineer. The designation of such person(s) shall not carry any obligation to use their services except that each party agrees that if the other party requests the intervention of such person(s) with respect to any such conflict, dispute or disagreement, the non-requesting party shall participate in good faith attempts to negotiate a resolution of the issue in dispute. If the parties cannot agree on a mutually acceptable person to serve in this capacity one shall be so appointed; provided, however, that either party may request the director of State Buildings Programs to appoint such a person, who, if appointed, shall be accepted for this purpose by both the Contractor and the Principal Representative.~~

~~The cost, if any, of the facilitative services of the person(s) so designated shall be shared if the parties so agree in any partnering plan; or in the absence of agreement the cost shall be borne by the party requesting the facilitation of negotiation.~~

~~Any dispute, claim, question or disagreement arising from or relating to the Contract or an alleged breach of the Contract may be subject to a request by either party for facilitated negotiation subject to the limitations hereafter listed, and the parties shall participate by consultation and negotiation with each other, as guided by the facilitator and with recognition of their mutual interests, in an attempt to reach an equitable solution satisfactory to both parties.~~

~~The obligation to participate in facilitated negotiations shall be as described above and elsewhere in these General Conditions, as by way of example in Article 36, Claims, or Article 34, Deductions for Uncorrected Work, and to the extent not more particularly described or limited elsewhere, each party's obligations shall be as follows:~~

~~1. a party shall not initiate communication with the facilitator regarding the issues in dispute; except that any request for facilitation shall be made in writing with copies sent, faxed or delivered to the other party;~~

~~2. a party shall prepare a brief written description of its position if so requested by the facilitator (who may elect to first discuss the parties' positions with each party separately in the interest of time and expense);~~

~~3. a party shall respond to any reasonable request for copies of documents requested by the facilitator, but such requests, if voluminous, may consist of an offer to allow the facilitator access to the parties' documents;~~

~~4. a party shall review any meeting agenda proposed by a facilitator and endeavor to be informed on the subjects to be discussed;~~

~~5. a party shall meet with the other party and the facilitator at a mutually acceptable place and time, or, if none can be agreed to, at the time and place designated by the facilitator for a period not to exceed four hours unless the parties agree to a longer period;~~

~~6. a party shall endeavor to assure that any facilitation meeting shall be attended by any other persons in their employ that the facilitator requests be present, if reasonably available, including the Architect/Engineer;~~

~~7. each party shall participate in such facilitated face-to-face negotiations of the issues in dispute through persons fully authorized to resolve the issue in dispute;~~

~~8. each party shall be obligated to participate in negotiations requested by the other party and to perform the specific obligations described in paragraphs (1) through (10) this Article 39, Facilitated Negotiation, no more than three times during the course of the Project;~~

~~9. neither party shall be under any obligation to resolve any issue by facilitated negotiation, but each agrees to participate in good faith and the Principal Representative shall direct the Architect/Engineer to appropriately document any resolution or agreement reached and to execute any Amendment or Change Order to the Contract necessary to implement their agreement; and,~~

~~10. any discussions and documents prepared exclusively for use in the negotiations shall be deemed to be matters pertaining to settlement negotiations and shall not be subsequently available in further proceedings except to the extent of any documented agreement.~~

~~In accordance with State Fiscal Rules and Article 52F, Choice of Law; No Arbitration, nothing in this Article 39 shall be deemed to call for arbitration or otherwise obligate the State to participate in any form of binding alternative dispute resolution.~~

~~A partnering plan developed as described in Article 2D, Communications and~~

Cooperation, may modify or expand the requirements of this Article but may not reduce the obligation to participate in facilitated negotiations when applicable. In the case of small projects estimated to be valued under $500,000, the requirements of this Article may be deleted from this Contract, by modification in Article 54, Optional Provisions And Elections. When so modified, the references to the parties' right to elect facilitated negotiation elsewhere in these General Conditions shall be deleted.

ARTICLE 40. RIGHT OF OCCUPANCY

The Principal Representative shall have the right to take possession of and to use any completed or partially completed portions of the Work, even if the time for completing the entire Work or portions of the Work has not expired and even if the Work has not been finally accepted, and the contractor shall fully cooperate with the Principal Representative to allow such possession and use. Such possession and use shall not constitute an acceptance of such portions of the Work, however it may be used by the Contractor as a factor in establishing the date of Substantial Completion and shall justify the filing of the Notice required by Article 41A, Notice of Completion.

Prior to any occupancy of the Project, an inspection shall be made by the Architect/Engineer, State Buildings Programs and the Contractor. Such inspection shall be made for the purpose of ensuring that the building is secure, protected by operation safety systems as designed, operable exits, power, lighting and HVAC systems, and otherwise ready for the occupancy intended. The inspection shall also document existing finish conditions to allow assessment of any damage by occupants. The inspection shall be conducted on the assumption that it shall be the final inspection called for in Article 41B, Final Inspection, unless the Architect/Engineer, State Buildings Programs and the Principal Representative determine that all of the requirements necessary to issue the Notice of Substantial Completion will not be met or satisfied. The Contractor shall assist the Principal Representative in completing and executing State Form SBP-01, Approval Of Beneficial Occupancy, prior to the Principal Representative's possession and use. Any and all areas so occupied will be subject to a final inspection when the Contractor complies with Article 41, Completion, Final Inspection, Acceptance And Settlement.

ARTICLE 41. COMPLETION, FINAL INSPECTION, ACCEPTANCE AND SETTLEMENT

A. NOTICE OF COMPLETION

When the Work, or a discrete physical portion of the Work (as hereafter described) which the Principal Representative has agreed to accept separately, is substantially complete and ready for final inspection, the Contractor shall file a written Notice with the Architect/Engineer that the Work, or such discrete physical portion, in the opinion of the Contractor, is substantially complete under the terms of the Contract. The Contractor shall prepare and submit with such Notice a comprehensive list of items to be completed or corrected prior to final payment, which shall be subject to review and additions as the Architect/Engineer or the Principal Representative shall determine after inspection. If the

~~Architect/Engineer or the Principal Representative believe that any of the items on the list of items submitted, or any other item of work to be corrected or completed, or the cumulative number of items of work to be corrected or completed, will prevent a determination that the Work is substantially complete, those items shall be completed by the Contractor and the Notice shall then be resubmitted.~~

~~B. FINAL INSPECTION~~

~~Within ten (10) days after the Contractor files written Notice that the Work is substantially complete, the Architect/Engineer, the Principal Representative, and the Contractor shall make a "final inspection" of the Project to determine whether the Work is substantially complete and has been completed in accordance with the Contract Documents. State Buildings Programs shall be notified of the inspection not less than three (3) business days in advance of the inspection. The Contractor shall provide the Principal Representative and the Architect/Engineer an updated punch list in sufficient detail to fully outline the following:~~

~~1. work to be completed, if any; and~~

~~2. work not in compliance with the Drawings or Specifications, if any.~~

~~A final punch list shall be made by the Architect/Engineer in sufficient detail to fully outline to the Contractor:~~

~~1. work to be completed, if any;~~

~~2. work not in compliance with the Drawings or Specifications, if any; and~~

~~3. unsatisfactory work for any reason, if any.~~

~~The required number of copies of the final punch list will be countersigned by the authorized representative of the Principal Representative and will then be transmitted by the Architect/Engineer to the Contractor, the Principal Representative, and State Buildings Programs. The Architect/Engineer's final punch list shall control over the Contractor's preliminary punch list.~~

~~C. NOTICE OF SUBSTANTIAL COMPLETION~~

~~Notice of Substantial Completion shall establish the date of substantial Completion of the Project. The Contractor acknowledges and agrees that because the departments, agencies and institutions of the State of Colorado are generally involved with the business of the public at large, greater care must be taken in establishing the date of substantial completion than might otherwise be the case to ensure that a project or building or discrete physical portion of the Work is fully usable and safe for public use, and that such care necessarily raises the standard by which the concept of substantial completion is applied for a public building.~~

~~The Notice of Substantial Completion shall not be issued until the following have been fully established:~~

~~1. The Notice of Approval of Beneficial Occupancy (SBP-01), if required, has been fully executed;~~

~~2. All required building code inspections have been called for and the appropriate code officials have affixed their signatures to the Building Inspection Record indicating successful completion of all required code inspections;~~

~~3. All required corrections noted on the Building Inspection Record shall have been completed unless the Architect/Engineer, the Principal Representative and State Buildings Programs, in their complete and absolute discretion, all concur that the condition requiring the remaining correction is not in any way life threatening, does not otherwise endanger persons or property, and does not result in any undue inconvenience or hardship to the Principal Representative or the public;~~

~~4. The building, structure or Project can be fully and comfortably used by the Principal Representative and the public without undue interference by the Contractor's, employees and workers during the completion of the final punch list taking into consideration the nature of the public uses intended and taking into consideration any stage or level of completion of HVAC system commissioning or other system testing required by the Specifications to be completed prior to issuance of the Notice of Substantial Completion;~~

~~5. The Project has been fully cleaned as required by these General Conditions, and as required by any stricter requirements of the Specifications, and the overall state of completion is appropriate for presentation to the public; and~~

~~6. The Contractor has provided a schedule for the completion of each and every item identified on the punch list which specifies the Subcontractor or trade responsible for the work, and the dates the completion or correction of the item will be commenced and finished; such schedule will show completion of all remaining final punch list items within the period indicated in the Contract for final punch list completion prior to Final Acceptance, with the exception of only those items which are beyond the control of the Contractor despite due diligence. The schedule shall provide for a reasonable punch list inspection process. Unless liquidated damages have been specified in Article 54D(2), the cost to the Principal Representative, if any, for re-inspections due to failure to adhere to the Contractor's proposed punch-list completion schedule shall be the responsibility of the Contractor and may be deducted by the Principal Representative from final amounts due to the Contractor.~~

~~Substantial completion of the entire Project shall not be conclusively established by a decision by the Principal Representative to take possession and use of a portion, or all of the Project, where portions of the Project cannot meet all the criteria noted above. Notice of Substantial Completion for the entire Project shall, however, only be withheld for substantial reasons when the Principal Representative has taken possession and uses all of the Project in accordance with the terms of Article 40, Right Of Occupancy. Failure to furnish the required~~

completion schedule shall constitute a substantial reason for withholding the issuance of any Notice of Substantial Completion.

The Contractor shall have the right to request a final inspection of any discrete physical portion of the Project when in the opinion of the Architect/Engineer a final punch list can be reasonably prepared, without confusion as to which portions of the Project are referred to in any subsequent Notice of Partial Final Settlement which might be issued after such portion is finally accepted. Discrete physical portions of the Project may be, but shall not necessarily be limited to, such portions of the Project as separate buildings where a Project consists of multiple buildings. Similarly, an addition to an existing building where the Project also calls for renovation or remodeling of the existing building may constitute a discrete physical portion of the Project. In such circumstances, when in the opinion of the Principal Representative, the Architect/Engineer and State Buildings Programs, the requirements for issuance of a Notice of Substantial Completion can be satisfied with respect to the discrete portion of the Project, a partial Notice of Substantial Completion may be issued for such discrete physical portion of the Project. The ability to beneficially occupy a discrete physical portion of the Project shall also be considered.

D. NOTICE OF ACCEPTANCE

The Notice of Acceptance shall establish the completion date of the Project. It shall not be authorized until the Contractor shall have performed all of the work to allow completion and approval of the Closing-Out Checklist/Final Occupancy Permit (SBP-05). It shall not be authorized until the Contract Close-out Punch-list (SBP-06) shall have been prepared and approved containing no more than ten items of work remaining to be completed or repaired.

Where partial Notices of Substantial Completion have been issued, partial Notices of Final Acceptance may be similarly issued when appropriate for that portion of the Work. Partial Notice of Final Acceptance may also be issued to exclude the work described in Change Order s executed during late stages of the Project where a later completion date for the Change-Ordered work is expressly provided for in the Contract as amended by the Change Order, provided the work can be adequately described to allow partial advertisement of any Notice of Partial Final Settlement to be issued without confusion as to the work included for which final payment will be made.

E. SETTLEMENT

Final payment and settlement shall be made on the date fixed and published for such payment except as hereafter provided. The Principal Representative shall not authorize final payment until all items on the Close-out Punch-list (SBP-06) have been completed, the Notice of Acceptance issued, and the Notice of Contractors Settlement published. If the work shall be substantially completed, but final acceptance and completion thereof shall be prevented through delay in correction of minor defects, or unavailability of materials or other causes beyond the control of the Contractor, the Principal Representative in his or her discretion

~~may release to the Contractor such amounts as may be in excess of three times the cost of completing the unfinished work or the cost of correcting the defective work, as estimated by the Architect/Engineer and approved by State Buildings Programs. Before the Principal Representative may issue the Notice of Contractors Settlement and advertise the Project for final payment, the Contractor shall have corrected all items on the punch list except those items for which delayed performance is expressly permitted, subject to withholding for the cost thereof, and shall have:~~

~~1. Delivered to the Architect/Engineer:~~

~~a. All guarantees and warranties;~~

~~b. All statements to support local sales tax refunds, if any;~~

~~c. Three (3) complete bound sets of required operating maintenance instructions; and,~~

~~d. One (1) set of as-built Contract Documents showing all job changes.~~

~~2. Demonstrated to the operating personnel of the Principal Representative the proper operation and maintenance of all equipment.~~

~~Upon completion of the foregoing the Project shall be advertised in accordance with the Notice of Contractor's Settlement by two publications of Notice, the last publication appearing at least ten (10) days prior to the time of final settlement. Publication and final settlement should not be postponed or delayed solely by virtue of unresolved claims against the Project or the Contractor from Subcontractors, suppliers or materialmen based on good faith disputes; the resolution of the question of payment in such cases being directed by statute.~~

~~Except as hereafter provided, on the date of final settlement thus advertised, provided the Contractor has submitted a written Notice to the Architect/Engineer that no claims have been filed, and further provided the Principal Representative shall have received no claims, final payments and settlement shall be made in full. If any unpaid claim for labor, materials, rental machinery, tools, supplies or equipment is filed before payment in full of all sums due the Contractor, the Principal Representative and the State Controller shall withhold from the Contractor on the date established for final settlement, sufficient funds to insure the payment of such claim, until the same shall have been paid or withdrawn, such payment or withdrawal to be evidenced by filing a receipt in full or an order for withdrawal signed by the claimant or his or her duly authorized agent or assignee. The amount so withheld may be in the amount of 125% of the claims or such other amount as the Principal Representative reasonably deems necessary to cover expected legal expenses. Such withheld amounts shall be in addition to any amount withheld based on the cost to compete unfinished work or the cost to repair defective work. However, as provided by statute, such funds shall not be withheld longer than ninety (90) days following the date fixed for final settlement with the Contractor, as set forth in the published Notice of Contractors Settlement, unless an action at law shall be commenced within that time to enforce such unpaid claim and a Notice of such action~~

at law shall have been filed with the Principal Representative and the State Controller. At the expiration of the ninety (90) day period, the Principal Representative shall authorize the State Controller to release to the Contractor all other money not the subject of such action at law or withheld based on the cost to compete unfinished work or the cost to repair defective work.

Notices of Partial Final Settlement may be similarly advertised, provided all conditions precedent have been satisfied as though that portion of the work affected stood alone, a Notice of Partial Acceptance has been issued, and the consent of surety to the partial final settlement has been obtained in writing. Thereafter, partial final payment s may be made to the Contractor subject to the same conditions regarding unpaid claims.

ARTICLE 42. GENERAL WARRANTY AND CORRECTION OF WORK AFTER ACCEPTANCE

The Contractor warrants that the materials used and the equipment furnished shall be new and of good quality unless specified to the contrary. The Contractor further warrants that the Work shall in all respects be free from material defects not permitted by the Specifications and shall be in accordance with the requirements of the Contract Documents. Neither the final certificate for payment nor any provision in the Contract Documents shall relieve the Contractor of responsibility for defects or faulty materials or workmanship. The Contractor shall be responsible to the Principal Representative for such warranties for the longest period permitted by any applicable statute of limitations.

In addition to these general warranties, and without limitation of these general warranties, for a period of one year after the date of any Notice of Substantial Completion, or any Notice of Partial Substantial Completion if applicable, the Contractor shall remedy defects, and faulty workmanship or materials, and work not in accordance with the Contract Documents which was not accepted at the time of the Notice of Final Acceptance, all in accordance with the provisions of Article 45, One-Year Guarantee And Special Guarantees And Warranties.

ARTICLE 43. LIENS

Colorado statutes do not provide for any right of lien against public buildings. In lieu thereof, § 38-26-107, C.R.S., provides adequate relief for any claimant having furnished labor, materials, rental machinery, tools, equipment, or services toward construction of the particular public work in that final payment may not be made to a Contractor until all such creditors have been put on Notice by publication in the public press of such pending payment and given opportunity for a period of up to ninety (90) days to stop payment to the Contractor in the amount of such claims.

ARTICLE 44. ONE-YEAR GUARANTEE AND SPECIAL GUARANTEES AND WARRANTIES

A. ONE-YEAR GUARANTEE OF THE WORK

The Contractor shall guarantee to remedy defects and repair or replace the Work for a period of one year from the date of the Notice Substantial Completion or from the dates of any partial Notices of Substantial

~~Completion issued for discrete physical portions of the Work. The Contractor shall remedy any defects due to faulty materials or workmanship and shall pay for, repair and replace any damage to other work resulting there from, which shall appear within a period of one year from the date of such Notice(s) of Substantial Completion. The Contractor shall also remedy any deviation from the requirements of the Contract Documents which shall later be discovered within a period of one year from the date of the Notice of Substantial Completion; provided, however, that the Contractor shall not be required to remedy deviations from the requirements of the Contract Documents where such deviations were obvious, apparent and accepted by the Architect/Engineer or the Principal Representative at the time of the Notice of Final Acceptance. The Principal Representative shall give Notice of observed defects or other work requiring correction with reasonable promptness. Such Notice shall be in writing to the Architect/Engineer and the Contractor.~~

~~The one year guarantee of the Contractor's work may run separately for discrete physical portions of the Work for which partial Notices of Substantial Completion have been issued, however, it shall run from the last Notice of Substantial Completion with respect to all or any systems common to the work to which more than one Notice of Substantial Completion may apply.~~

~~This one-year guarantee shall not be construed to limit the Contractor 's general warranty described in Article 42, General Warranty and Correction of Work After Acceptance, that all materials and equipment are new and of good quality, unless specified to the contrary, and that the Work shall in all respects be free from material defects not permitted by the Specifications and in accordance with the requirements of the Contract Documents.~~

~~B. SPECIAL GUARANTEES AND WARRANTIES~~

~~In case of work performed for which product, manufacturers or other special warranties are required by the Specifications, the Contractor shall secure the required warranties and deliver copies thereof to the Principal Representative through the Architect/Engineer upon completion of the work.~~

~~These product, manufacturers or other special warranties, as such, do not in any way lessen the Contractor's responsibilities under the Contract. Whenever guarantees or warranties are required by the Specifications for a longer period than one year, such longer period shall govern.~~

~~ARTICLE 45. GUARANTEE INSPECTIONS AFTER COMPLETION~~

~~The Architect/Engineer, the Principal Representative and the Contractor together shall make at least two (2) complete inspections of the work after the Work has been determined to be substantially complete and accepted. One such inspection, the "Six-Month Guarantee Inspection," shall be made approximately six (6) months after date of the Notice of Substantial Completion, unless in the case of smaller projects valued under $500,000 this inspection is declined in Article 54A, Modification of Article 45, in which case the inspection to occur at six months shall not~~

~~be required. Another such inspection, the "Eleven-Month Guaranty Inspection" shall be made approximately eleven (11) months after the date of the Notice of Substantial Completion. The Principal Representative shall schedule and so notify all parties concerned, including State Buildings Programs, of these inspections. If more than one Notice of Substantial Completion has been issued at the reasonable discretion of the Principal Representative separate eleven month inspections may be required where the one year guarantees do not run reasonably concurrent.~~

~~Written punch lists and reports of these inspections shall be made by the Architect/Engineer and forwarded to the Contractor, the Principal Representative, State Buildings Programs, and all other participants within ten (10) days after the completion of the inspections. The punch list shall itemize all guarantee items, prior punch list items still to be corrected or completed and any other requirements of the Contract Documents to be completed which were not waived by final acceptance because they were not obvious or could not reasonably have been previously observed. The Contractor shall immediately initiate such remedial work as may be necessary to correct any deficiencies or defective work shown by this report, and shall promptly complete all such remedial work in a manner satisfactory to the Architect/Engineer, the Principal Representative and State Buildings Programs.~~

~~If the Contractor fails to promptly correct all deficiencies and defects shown by this report, the Principal Representative may do so, after giving the Contractor ten (10) days written Notice of intention to do so.~~

~~The State of Colorado, acting by and through the Principal Representative, shall be entitled to collect from the Contractor all costs and expenses incurred by it in correcting such deficiencies and defects, as well as all damages resulting from such deficiencies and defects.~~

~~ARTICLE 46. TIME OF COMPLETION AND LIQUIDATED DAMAGES~~

~~It is hereby understood and mutually agreed, by and between the parties hereto, that the date of beginning, rate of progress, and the time for completion of the Work to be done hereunder are ESSENTIAL CONDITIONS of this Agreement, and it is understood and agreed that the Work embraced in this Contract shall be commenced at the time specified in the Notice to Proceed (SC-6.26).~~

~~It is further agreed that time is of the essence of each and every portion of this Contract, and of any portion of the Work described on the Drawings or Specifications, wherein a definite and certain length of time is fixed for the performance of any act whatsoever. The parties further agree that where under the Contract additional time is allowed for the completion of the Work or any identified portion of the Work, the new time limit or limits fixed by such extension of the time for completion shall be of the essence of this Agreement.~~

~~The Contractor acknowledges that subject to any limitations in the Advertisement for Bids, issued for the Project, the Contractor's bid is consistent with and considers the number of days to substantially complete the Project and the number of days to finally complete the Project to~~

~~which the parties may have stipulated in the Agreement, which stipulation was based on the Contractor's bid. The Contractor agrees that work shall be prosecuted regularly, diligently and uninterruptedly at such rate of progress as will ensure the Project will be substantially complete, and fully and finally complete, as recognized by the issuance of all required Notices of Substantial Completion and Notices of Final Acceptance, within any times stipulated and specified in the Agreement, as the same may be amended by Change Order or other written modification, and that the Principal Representative will be damaged if the times of completion are delayed.~~

~~It is expressly understood and agreed, by and between the parties hereto, that the times for the Substantial Completion of the Work or for the final acceptance of the Work as may be stipulated in the Agreement, and as applied here and in Article 54D, Modifications of Article 46, are reasonable times for these stages of completion of the Work, taking into such consideration all factors, including the average climatic range and usual industrial conditions prevailing in the locality of the building operations.~~

~~If the Contractor shall neglect, fail or refuse to complete the Work within the times specified in the Agreement, such failure shall constitute a breach of the terms of the Contract and the State of Colorado, acting by and through the Principal Representative, shall be entitled to liquidated damages for such neglect, failure or refusal, as specified in Article 54D, Modification of Article 46.~~

~~The Contractor and the Contractor's Surety shall be jointly liable for and shall pay the Principal Representative, or the Principal Representative may withhold, the sums hereinafter stipulated as liquidated damages for each calendar day of delay until the entire Project is 1) substantially completed, and the Notice (or all Notices) of Substantial Completion are issued, 2) finally complete and accepted and the Notice (or all Notices) of Acceptance are issued, or 3) both. Delay in substantial completion shall be measured from the Date of the Notice to Proceed and delay in final completion and acceptance shall be measured from the Date of the Notice of Substantial Completion.~~

~~In the first instance, specified in Article 54D(1), Modification of Article 46, liquidated damages, if any, shall be the amount specified therein, for each calendar day of delay beginning after the stipulated number of days for Substantial Completion from the date of the Notice to Proceed, until the date of the Notice of Substantial Completion. Unless otherwise specified in any Supplementary General Conditions, in the event of any partial Notice of Substantial Completion, liquidated damages shall accrue until all required Notices of Substantial Completion are issued.~~

~~In the second instance, specified in Article 54D(2), Modification of Article 46, liquidated damages, if any, shall be the amount specified in Article 54D, Modification of Article 46, for each calendar day in excess of the number of calendar days specified in the Contractor 's bid for the Project and stipulated in the Agreement to finally complete the Project (as defined by the issuance of the Notice of Acceptance) after the final Notice of Substantial Completion has been issued.~~

~~In the third instance, when so specified in both Articles 54D(1) and (2), both types of liquidated damages shall be separately assessed where those delays have occurred.~~

~~The parties expressly agree that said amounts are a reasonable estimate of the presumed actual damages that would result from any of the breaches listed, and that any liquidated damages that are assessed have been agreed to in light of the difficulty of ascertaining the actual damages that would be caused by any of these breaches at the time this Contract was formed; the liquidated damages in the first instance representing an estimate of damages due to the inability to use the Project; the liquidated damages in the second instance representing an estimate of damages due to the additional administrative, technical, supervisory and professional expenses related to and arising from the extended closeout period including delivery of any or all guarantees and warranties, the submittals of sales and use tax payment forms, the calling for the final inspection and the completion of the final punch list.~~

~~The parties also agree and understand that the liquidated damages to be assessed in each instance are separate and distinct, although potentially cumulative, damages for the separate and distinct breaches of delayed Substantial Completion or final acceptance. Such liquidated damages shall not be avoided by virtue of the fact of concurrent delay caused by the Principal Representative, or anyone acting on behalf of the Principal Representative, but in such event the period of delay for which liquidated damages are assessed shall be equitably adjusted in accordance with Article 38, Delays And Extensions Of Time.~~

~~ARTICLE 47. DAMAGES~~

~~If either party to this Contract shall suffer damage under this Contract in any manner because of any wrongful act or neglect of the other party or of anyone employed by either of them, then the party suffering damage shall be reimbursed by the other party for such damage. Except to the extent of damages liquidated for the Contractor's failure to achieve timely completion as set forth in Article 46, Time of Completion and Liquidated Damages, the Principal Representative shall be responsible for, and at his or her option may insure against, loss of use of any existing property not included in the Work, due to fire or otherwise, however caused. Notwithstanding the foregoing, or any other provision of this Contract, to the contrary, no term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, Section 24-10-101, et seq., CRS, as now or hereafter amended. The parties understand and agree that liability for claims for injuries to persons arising out of negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of Section 24-10-101, et seq., CRS, as now or hereafter amended and the risk management statutes, Section 24-30-1501, et seq., CRS, as now or hereafter amended.~~

~~Notice of intent to file a claim under this clause shall be made in writing to the party liable within a reasonable time of the first~~

observance of such damage and not later than the time of final payment, except that in the case of claims by the Principal Representative involving warranties against faulty work or materials Notice shall be required only to the extent stipulated elsewhere in these General Conditions. Claims made to the Principal Representative involving extra cost or extra time arising by virtue of instructions to the Contractor to which Article 36, Claims, applies shall be made in accordance with Article 36. Other claims arising under the Contract involving extra cost or extra time which are made to the Principal Representative under this clause shall also be made in accordance with the procedures of Article 36, whether or not arising by virtue of instructions to the Contractor; provided however that it shall not be necessary to first obtain or request a written judgment of the Architect/Engineer.

Provided written Notice of intent to file a claim is provided as required in the preceding paragraph, nothing in this Article shall limit or restrict the rights of either party to bring an action at law or to seek other relief to which either party may be entitled, including consequential damages, if any, and shall not be construed to limit the time during which any action might be brought. Nothing in these General Conditions shall be deemed to limit the period of time during which any action may be brought as a matter of contract, tort, warranty or otherwise, it being the intent of the parties to allow any and all actions at law or in equity for such periods as the law permits. All such rights shall, however be subject to the obligation to assert claims and to appeal denials pursuant to Article 36, Claims, where applicable.

ARTICLE 48. STATE'S RIGHT TO DO THE WORK; TEMPORARY SUSPENSION OF WORK; DELAY DAMAGES

A. STATE'S RIGHT TO DO THE WORK

If after receipt of Notice to do so, the Contractor should neglect to prosecute the Work properly or fail to perform any provision of the Contract, the Principal Representative, after a second seven (7) days' advance written Notice to the Contractor and the Surety may, without prejudice to any other remedy the Principal Representative may have, take control of all or a portion of the Work, as the Principal Representative deems necessary and make good such deficiencies deducting the cost thereof from the payment then or thereafter due the Contractor, as provided in Article 30, Correction Of Work Before Acceptance and Article 33, Payments Withheld, provided, however, that the Architect/Engineer shall approve the amount charged to the Contractor by approval of the Change Order.

B. TEMPORARY SUSPENSION OF WORK

The State, acting for itself or by and through the Architect/Engineer, shall have the authority to suspend the Work, either wholly or in part, for such period or periods as may be deemed necessary due to:

1. Unsuitable weather;

2. Faulty workmanship;

3. Improper superintendence;

4. Contractor's failure to carry out orders or to perform any provision of the Contract Documents;

5: Loss of, or restrictions to, appropriations;

6. Conditions, which may be considered unfavorable for the prosecution of the Work.

If it should become necessary to stop work for an indefinite period, the Contractor shall store materials in such manner that they will not become an obstruction or become damaged in any way; and he or she shall take every precaution to prevent damage to or deterioration of the Work, provide suitable drainage and erect temporary structures where necessary.

Notice of suspension of work shall be provided to the Contractor in writing stating the reasons therefore. The Contractor shall again proceed with the work when so notified in writing.

The Contractor understands and agrees that the State of Colorado cannot predict with certainty future revenues and could ultimately lack the revenue to fund the appropriations applicable to this Contract. The Contractor further acknowledges and agrees that in such event that State may, upon Notice to the Contractor, suspend the work in anticipation of a termination of the Contract for the convenience of the State, pursuant to Article 50, Termination For Convenience of State. If the Contract is not so terminated the Contract sum and the Contract time shall be equitably adjusted at the time the Principal Representative directs the work to be recommenced and gives Notice that the revenue to fund the appropriation is available.

C. DELAY DAMAGES

The Principal Representative and the State of Colorado shall be liable to the Contractor for the payment of any claim for extra costs, extra compensation or damages occasioned by hindrances or delays encountered in the work only when and to the limited extent that such hindrance or delay is caused by an act or omission within the control of the Principal Representative, the Architect/Engineer or other persons or entities acting on behalf of the Principal Representative. Further, the Principal Representative and the State of Colorado shall be liable to the Contractor for the payment of such a claim only if the Contractor has provided required Notice of the delay or impact, or has presented its claim for an extension of time or claim of other delay or other impact due to changes ordered in the work before proceeding with the changed work. Except as otherwise provided, claims for extension of time shall be Noticed and filed in accordance with Article 38, Delays and Extensions of Time, within three (3) business days of the beginning of the delay with any claim filed within seven (7) days after the delay has ceased, or such claim is waived. Claims for extension of time or for other delay or other impact resulting

~~from changes ordered in the Work shall be presented and adjusted as provided in Article 35, Changes in the Work.~~

~~ARTICLE 49. STATE'S RIGHTS TO TERMINATE CONTRACT~~

~~A. GENERAL~~

~~If the Contractor should be adjudged bankrupt, or if he or she should make a general assignment for the benefit of his or her creditors, or if a receiver should be appointed to take over his affairs, or if he or she should fail to prosecute his or her work with due diligence and carry the work forward in accordance with the construction schedule and the time limits set forth in the Contract Documents, or if he or she should fail to subsequently perform one or more of the provisions of the Contract Documents to be performed by him, the Principal Representative may serve written Notice on the Contractor and the Surety on performance and payment bonds, stating his or her intention to exercise one of the remedies hereinafter set forth and the grounds upon which the Principal Representative bases his or her right to exercise such remedy.~~

~~In such event, unless the matter complained of is satisfactorily cleared within ten (10) days after delivery of such Notice, the Principal Representative may, without prejudice to any other right or remedy, exercise one of such remedies at once, having first obtained the concurrence of the Architect/Engineer in writing that sufficient cause exists to justify such action.~~

~~B. CONDITIONS AND PROCEDURES~~

~~1. The Principal Representative may terminate the services of the Contractor, which termination shall take effect immediately upon service of Notice thereof on the Contractor and his or her Surety, whereupon the Surety shall have the right to take over and perform the Contract. If the Surety does not provide Notice to the Principal Representative of its intent to commence performance of the Contract within ten (10) days after delivery of the Notice of termination, the Principal Representative may take over the Work, take possession of and use all materials, tools, equipment and appliances on the premises and prosecute the Work to completion by such means as he or she shall deem best. In the event of such termination of his or her service, the Contractor shall not be entitled to any further payment under the Contract until the Work is completed and accepted. If the Principal Representative takes over the Work and if the unpaid balance of the contract price exceeds the cost of completing the Work, including compensation for any damages or expenses incurred by the Principal Representative through the default of the Contractor, such excess shall be paid to the Contractor. If, however, the cost, expenses and damages as certified by the Architect/Engineer exceed such unpaid balance of the contract price, the Contractor and his or her Surety shall pay the difference to the Principal Representative.~~

~~2. The Principal Representative may require the Surety on the Contractor's bond to take control of the Work and see to it that all the deficiencies of the Contractor are made good, with due diligence within ten (10) days of delivery of Notice to the Surety to do so. As between the Principal~~

Representative and the Surety, the cost of making good such deficiencies shall all be borne by the Surety. If the Surety takes over the Work, either by election upon termination of the services of the Contractor pursuant to Section B(1) of this Article 49, State's Right To Terminate Contract, or upon instructions from the Principal Representative to do so, the provisions of the Contract Documents shall govern the work to be done by the Surety, the Surety being substituted for the Contractor as to such provisions, including provisions as to payment for the Work, the times of completion and provisions of this Article as to the right of the Principal Representative to do the Work or to take control of all or a portion of the Work.

3. The Principal Representative may take control of all or a portion of the Work and make good the deficiencies of the Contractor, or the Surety if the Surety has been substituted for the Contractor, with or without terminating the Contract, employing such additional help as the Principal Representative deems advisable in accordance with the provisions of Article 48A, State's Right To Do The Work; Temporary Suspension Of Work; Delay Damages. In such event, the Principal Representative shall be entitled to collect from the Contractor and his or her Surety, or to deduct from any payment then or thereafter due the Contractor, the costs incurred in having such deficiencies made good and any damages or expenses incurred through the default of Contractor, provided the Architect/Engineer approves the amount thus charged to the Contractor. If the Contract is not terminated, a Change Order to the Contract shall be executed, unilaterally if necessary, in accordance with the procedures of Article 35, Changes In The Work.

C. ADDITIONAL CONDITIONS

If any termination by the Principal Representative for cause is later determined to have been improper, the termination shall be automatically converted to and deemed to be a termination by the Principal Representative for convenience and the Contractor shall be limited in recovery to the compensation provided for in Article 50, Termination For Convenience Of State. Termination by the Contractor shall not be subject to such conversion.

ARTICLE 50. TERMINATION FOR CONVENIENCE OF STATE

A. NOTICE OF TERMINATION

The performance of Work under this Contract may be terminated, in whole or from time to time in part, by the State whenever for any reason the Principal Representative shall determine that such termination is in the best interest of State. Termination of work hereunder shall be effected by delivery to the Contractor of a Notice of such termination specifying the extent to which the performance of work under the Contract is terminated and the date upon which such termination becomes effective.

B. PROCEDURES

After receipt of the Notice of termination, the Contractor shall, to the extent appropriate to the termination, cancel outstanding commitments

~~hereunder covering the procurement of materials, supplies, equipment and miscellaneous items. In addition, the Contractor shall exercise all reasonable diligence to accomplish the cancellation or diversion of all applicable outstanding commitments covering personal performance of any work terminated by the Notice. With respect to such canceled commitments, the Contractor agrees to:~~

~~1. settle all outstanding liabilities and all claims arising out of such cancellation of commitments, with approval or ratification of the Principal Representative, to the extent he or she may require, which approval or ratification shall be final for all purposes of this clause; and,~~

~~2. assign to the State, in the manner, at the time, and to the extent directed by the Principal Representative, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the State shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.~~

~~The Contractor shall submit his or her termination claim to the Principal Representative promptly after receipt of a Notice of termination, but in no event later than three (3) months from the effective date thereof, unless one or more extensions in writing are granted by the Principal Representative upon written request of the Contractor within such three month period or authorized extension thereof. Upon failure of the Contractor to submit his or her termination claim within the time allowed, the Principal Representative may determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.~~

~~Costs claimed, agreed to, or determined pursuant to the preceding and following paragraph shall be in accordance with the provisions of § 24-107-101, C.R.S., as amended and associated Cost Principles of the Colorado Procurement Rules as in effect on the date of this Contract.~~

~~Subject to the preceding provisions, the Contractor and the Principal Representative may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the termination under this clause, which amount or amounts may include any reasonable cancellation charges thereby incurred by the Contractor and any reasonable loss upon outstanding commitments for personal services which he or she is unable to cancel; provided, however, that in connection with any outstanding commitments for personal services which the Contractor is unable to cancel, the Contractor shall have exercised reasonable diligence to divert such commitments to other activities and operations. Any such agreement shall be embodied in an Amendment to this Contract and the Contractor shall be paid the agreed amount.~~

~~The State may from time to time, under such terms and conditions as it may prescribe, make partial payments against costs incurred by the Contractor in connection with the termination portion of this Contract, whenever, in the opinion of the Principal Representative, the aggregate of such~~

payments is within the amount to which the Contractor will be entitled hereunder.

The Contractor agrees to transfer title and deliver to the State, in the manner, at the time, and to the extent, if any, directed by the Principal Representative, such information and items which, if the Contract had been completed, would have been required to be furnished to the State, including:

a. completed or partially completed plans, Drawings and information; and,

b. materials or equipment produced or in process or acquired in connection with the performance of the work terminated by the Notice.

Other than the above, any termination inventory resulting from the termination of the Contract may, with written approval of the Principal Representative, be sold or acquired by the Contractor under the conditions prescribed by and at a price or prices approved by the Principal Representative. The proceeds of any such disposition shall be applied in reduction of any payments to be made by the State to the Contractor under this Contract or shall otherwise be credited to the price or cost of work covered by this Contract or paid in such other manners as the Principal Representative may direct. Pending final disposition of property arising from the termination, the Contractor agrees to take such action as may be necessary, or as the Principal Representative may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Contractor and in which the State has or may acquire an interest.

Any disputes as to questions of fact, which may arise hereunder, shall be subject to the Remedies provisions of the Colorado Procurement Code, §§ 24-109-101, et seq., C.R.S., as amended.

ARTICLE 51. CONTRACTOR'S RIGHT TO STOP WORK AND/OR TERMINATE CONTRACT

If the Work shall be stopped under an order of any court or other public authority for a period of three (3) months through no act or fault of the Contractor or of any one employed by him, then the Contractor may on seven (7) days' written Notice to the Principal Representative and the Architect/Engineer stop work or terminate this Contract and recover from the Principal Representative payment for all work executed, any losses sustained on any plant or material, and a reasonable profit. If the Architect/Engineer shall fail to issue or otherwise act in writing upon any certificate for payment within ten (10) days after it is presented and received by the Architect/Engineer, as provided in Article 31, Applications For Payments, or if the Principal Representative shall fail to pay the Contractor any sum certified that is not disputed in whole or in part by the Principal Representative in writing to the Contractor and the Architect/Engineer within thirty (30) days after the Architect/Engineer's certification, then the Contractor may on ten (10) days' written Notice to the Principal Representative and the Architect/Engineer stop work and/or give written Notice of intention to terminate this Contract.

If the Principal Representative shall thereafter fail to pay the Contractor any amount certified by the Architect/Engineer and not disputed in writing by the Principal Representative within ten (10) days after receipt of such Notice, then the Contractor may terminate this Contract and recover from the Principal Representative payment for all work executed, any losses sustained upon any plant or materials, and a reasonable profit. The Principal Representative's right to dispute an amount certified by the Architect/Engineer shall not relieve the Principal Representative of the obligation to pay amounts not in dispute as certified by the Architect/Engineer.

ARTICLE 52. SPECIAL PROVISIONS

A. CONTROLLER'S APPROVAL CRS 24-30-202(1)

This Contract shall not be deemed valid until it has been approved by the Controller of the State of Colorado or such assistant as he may designate.

B. FUND AVAILABILITY CRS 24-30-202(5.5)

Financial obligations of the State of Colorado payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. INDEMNIFICATION

The Contractor shall indemnify and save and hold harmless the State of Colorado and the Principal Representative, its officials, employees and agents, against any and all claims including, but not limited to, suits, actions, damages, liability and court awards including costs, expenses and attorneys fees incurred on account of injuries or damages sustained by any person, persons or property caused in whole or in part by the Contractor, employees, subcontractors, agents or assigns, or as a result of any act or omission, neglect or misconduct by the Contractor, or its employees, agents, subcontractors or assigns, including without limitation, damage to another contractor, neglect in safeguarding the work, defective work or the use of defective materials, but not to the extent such claims are caused by any act or omission of, or breach of contract by, the State, its employees, agents, other contractors or assignees, or other parties not under the control of or responsible to the Contractor.

D. INDEPENDENT CONTRACTOR 4 CCR 801-2

THE CONTRACTOR SHALL PERFORM ITS DUTIES HEREUNDER AS AN INDEPENDENT CONTRACTOR AND NOT AS AN EMPLOYEE. NEITHER THE CONTRACTOR NOR ANY AGENT OR EMPLOYEE OF THE CONTRACTOR SHALL BE OR SHALL BE DEEMED TO BE AN AGENT OR EMPLOYEE OF THE STATE. CONTRACTOR SHALL PAY WHEN DUE ALL REQUIRED EMPLOYMENT TAXES AND INCOME TAX AND LOCAL HEAD TAX ON ANY MONIES PAID BY THE STATE PURSUANT TO THIS CONTRACT. CONTRACTOR ACKNOWLEDGES THAT THE CONTRACTOR AND ITS EMPLOYEES ARE NOT ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS THE CONTRACTOR OR THIRD PARTY PROVIDES SUCH COVERAGE AND THAT THE STATE DOES NOT PAY FOR OR OTHERWISE PROVIDE SUCH COVERAGE. CONTRACTOR SHALL HAVE NO AUTHORIZATION, EXPRESS OR IMPLIED, TO BIND THE STATE TO ANY AGREEMENTS, LIABILITY, OR UNDERSTANDING EXCEPT AS EXPRESSLY

~~SET FORTH HEREIN. CONTRACTOR SHALL PROVIDE AND KEEP IN FORCE WORKERS' COMPENSATION (AND PROVIDE PROOF OF SUCH INSURANCE WHEN REQUESTED BY THE STATE) AND UNEMPLOYMENT COMPENSATION INSURANCE IN THE AMOUNTS REQUIRED BY LAW, AND SHALL BE SOLELY RESPONSIBLE FOR THE ACTS OF THE CONTRACTOR, ITS EMPLOYEES AND AGENTS.~~

~~E. NON-DISCRIMINATION~~

~~The Contractor agrees to comply with the letter and the spirit of all applicable state and federal laws respecting discrimination and unfair employment practices.~~

~~F. CHOICE OF LAW; NO ARBITRATION~~

~~The laws of the State of Colorado and rules and regulations issued pursuant thereto shall be applied in the interpretation, execution and enforcement of this Contract without application of any choice of law rules that would apply the laws of any other state. Any provision of this Contract, whether or not incorporated herein by reference, which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference or otherwise which purports to negate this Article 52F prohibition regarding arbitration in whole or in part shall be valid or enforceable or available in any action at law whether by way of complaint, defense or otherwise. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of the Contract to the extent that the Contract is capable of execution.~~

~~The non-binding facilitation of negotiation of disputes and disagreements provided for generally in Article 39, Non-Binding Dispute Resolution — Facilitated Negotiations, shall not be construed as providing for arbitration. If as a result of any partnering agreement, other forms of voluntary non-binding alternative dispute resolution are subsequently incorporated by Amendment, such as non-binding mediation, such dispute resolution processes shall also be not deemed to be arbitration.~~

~~At all times during the performance of this Contract, the Contractor shall strictly adhere to all applicable federal and State laws, rules, and regulations that have been or may hereafter be established.~~

~~G. VENDOR OFFSET SYSTEM CRS 24-30-202(1) & CRS 24-30-202.4~~

~~Pursuant to C.R.S. § 24-30-202.4, (as amended), the State Controller may withhold debts owed to State agencies under the vendor offset intercept system for: (a) unpaid child support debt or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in Article 22, Title 39, C.R.S.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) owed amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State or agency thereof, the amount of which is found to be owing as a result of final agency determination or reduced to judgment as certified by the State Controller.~~

H. EMPLOYEE FINANCIAL INTEREST CRS 24-18-201 & CRS 24-50-507

The signatories aver that to their knowledge, no employee of the State of Colorado has any personal or beneficial interest whatsoever in the service or property described herein.

ARTICLE 53. MISCELLANEOUS PROVISIONS

A. CONSTRUCTION OF LANGUAGE

The language used in these General Conditions shall be construed as a whole according to its plain meaning, and not strictly for or against any party. Such construction shall, however, construe language to interpret the intent of the parties giving due consideration to the order of precedence noted in Article 2C, Intent of Documents.

B. SEVERABILITY

If any covenant, term, condition, or provision contained in these General Conditions is held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such covenant, term, condition, or provision shall be severed or modified to the extent necessary to make it enforceable, and the resulting General Conditions shall remain in full force and effect, and such invalidity or other failure shall not affect the validity of any other covenant, term or provision hereof. Provided the same does not work a substantial injustice, these General Conditions shall be construed as if such invalid portion had not been inserted.

C. SECTION HEADINGS

The section or paragraph headings contained within these General Conditions are inserted for convenience only and shall not be construed to vary or add to the meaning of this Contract.

D. AUTHORITY

Each person executing the Agreement and its Exhibits in a representative capacity expressly represents and warrants that he or she has been duly authorized by one of the parties to execute the Agreement and has authority to bind said party to the terms and conditions hereof.

E. INTEGRATION OF UNDERSTANDING

This Contract is intended as the complete integration of all understandings between the parties and supercedes all prior negotiations, representations, or agreements, whether written or oral. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written Change Order or Amendment to this Contract.

F. VENUE

~~The parties agree that venue for any action related to performance of this Contract shall be an appropriate District Court of the State of Colorado.~~

~~G. NO THIRD PARTY BENEFICIARIES~~

~~Except as herein specifically provided otherwise, this Contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. The enforcement of the terms and conditions of this Contract and all rights of action relating to such enforcement, shall be strictly reserved to the parties to the Agreement. Nothing contained in the Contract Documents shall give or allow any claim or right of action whatsoever by any other person or entity as beneficiary; all such non-parties shall be deemed incidental beneficiaries only.~~

~~H. WAIVER~~

~~The waiver of any breach of a term hereof shall not be construed as a waiver of any other term, of the same term upon subsequent breach.~~

~~ARTICLE 54. OPTIONAL PROVISIONS AND ELECTIONS~~

~~The provisions of this Article 54 alter the preceding Articles or enlarge upon them as indicated: The Principal Representative and or the State Buildings Programs shall mark boxes and initial where applicable.~~

~~A. MODIFICATION OF ARTICLE 45. GUARANTEE INSPECTIONS AFTER COMPLETION~~

~~If the box below is marked the six month guarantee inspection is not required.~~

~~_____ Principal Representative initial~~

~~B. MODIFICATION OF ARTICLE 27. LABOR AND WAGES~~

~~If the box is marked the Federal Davis-Bacon Act shall be applicable to the Project. The minimum wage rates to be paid on the Project shall be furnished by the Principal Representative and included in the Contract Documents.~~

~~_____ Principal Representative initial~~

~~C. MODIFICATION OF ARTICLE 39. NON-BINDING DISPUTE RESOLUTION -FACILITATED NEGOTIATIONS~~

~~If the box is marked, and initialed by the State as noted, the requirement to participate in facilitated negotiations shall be deleted from this Contract. Article 39, Non-Binding Dispute Resolution — Facilitated Negotiations, shall be deleted in its entirety and all references to the right to the same where ever they appear in the contract shall be similarly deleted.~~

~~The box may be marked only for projects with an estimated value of less than $500,000.~~

~~_____ Principal Representative initial~~

~~D. MODIFICATION OF ARTICLE 46. TIME OF COMPLETION AND LIQUIDATED DAMAGES~~

~~If an amount is indicated immediately below, liquidated damages shall be applicable to this Project as, and to, the extent shown below. Where an amount is indicated below, liquidated damages shall be assessed in accordance with and pursuant to the terms of Article 46, Time Of Completion And Liquidated Damages, in the amounts and as here indicated. The election of liquidated damages shall limit and control the parties right to damages only to the extent noted.~~

~~1. For the inability to use the Project, for each day after the number of calendar days specified in the Contractor's bid for the Project and the Agreement for achievement of Substantial Completion, until the day that the Project has achieved Substantial Completion and the Notice of Substantial Completion is issued, the Contractor agrees that an amount equal to _____ ($) shall be assessed against Contractor from amounts due and payable to the Contractor under the Contract, or the Contractor and the Contractor's Surety shall pay to the Principal Representative such sum for any deficiency, if amounts on account thereof are deducted from remaining amounts due, but amounts remaining are insufficient to cover the entire assessment.~~

~~2. For damages related to or arising from additional administrative, technical, supervisory and professional expenses related to and arising from the extended closeout period, for each day in excess of the number of calendar days specified in the Contractor 's bid for the Project and the Agreement to finally complete the Project as defined by the issuance of the Notice of Final Acceptance) after the issuance of the final Notice of Substantial Completion, the Contractor agrees that an amount equal to _____ ($) shall be assessed against Contractor from amounts due and payable to the Contractor under the Contract, or the Contractor and the Contractor's Surety shall pay to the Principal Representative such sum for any deficiency, if amounts on account thereof are deducted from remaining amounts due but amounts remaining are insufficient to cover the entire assessment.~~

~~E. NOTICE IDENTIFICATION~~

~~All Notices pertaining to General Conditions or otherwise required to be given shall be transmitted in writing, to the individuals at the addresses listed below, and shall be deemed duly given when received by the parties at their addresses below or any subsequent persons or addresses provided to the other party in writing.~~

~~_~~

~~Notice to Principal Representative:~~

~~_~~

_____

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_____

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_____

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With copies to:

State Buildings Programs (or Delegee)

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State of Colorado

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_____

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_____

Notice to Contractor:

_____

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_____

.

_____

With copies to:

Editor’s Notes

History

Rules R-24-103-01, R-24-103-202a-10, R-12-103-202.5, R-24-103-204-03 eff. 11/01/2007.

Rule R-24-103-204-03(a) emer. rule eff. 08/13/2010; expired eff. 12/11/2010.

Rules R-24-102-206, R-24-103-101-01, R24-103-202b-01, R-103-202.3, R-24-103-402-01, R-24-111-
102-02 eff. 01/01/2014.

DEPARTMENT OF PERSONNEL AND ADMINISTRATION

Division of Finance and Procurement

PROCUREMENT RULES

1 CCR 101-9

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

ARTICLE 101 GENERAL PROVISIONS

PART 1 PURPOSES, CONSTRUCTION AND APPLICATION

R-24-101-101 Short title

(See Statute)

R-24-101-102 Purposes - Rules of Construction

(See Statute)

R-24-101-102-01 General

These rules implement the provisions of the Colorado Procurement Code (§24-101-101 et seq. CRS), the Construction Bidding for Public Projects Act (§24-92-101 CRS et seq.), Construction Contracts with Public Entities (§24-91-101 CRS et seq.) and the Integrated Delivery Method for Public Projects Act (§24-93-101 CRS et seq.).

R-24-101-102-02 Expenditure of Funds

These rules shall apply to every expenditure of public funds by the executive branch of this state, including federal assistance money, under any contract except supplies, services or construction as defined in Rule R-24-101-105-01.

R-24-101-103 Supplemental General Principles of Law Applicable

(See Statute)

R-24-101-104 Requirement of Good Faith

(See Statute)

R-24-101-105 Application of This Code

(See Statute)

R-24-101-105-01 Applicability

The Colorado Procurement Code and these rules do not apply to the following procurements:

(a) No state funds are expended or the contract is revenue-producing. Agencies shall maximize the return to the State when revenue-producing contracts are involved. Competitive bidding is encouraged to ensure fair and open competition.

(b) The procurement is made by the legislative or judicial branch of state government.

(c) The procurement is for highway and/or bridge construction.

(d) The contract is between state agencies, between the State and a political sub-division, another state, or the federal government, or any combination as described in R-24-110-101 through R-24-110-301.

(e) The procurement is for public printing which meets the requirements of Article 109, CRS, as amended.

(f) The procurement is for services provided by architects, engineers, landscape architects, industrial hygienists, and land surveyors (Ref. 24-30-1401 through 24-30-1407).

(g) After approval of a written determination, a supplier's item is to be procured for resale; or

(h) Where the procurement of services from a specific vendor(s) is necessary to comply with the specific terms and conditions of a grant award.

(i) The awarding of grants, as the term is defined in §24-101-301 (10.5) (A), (B) CRS.

PART 2 WRITTEN DETERMINATIONS

R-24-101-201-01 Preparation and Execution

Where the Colorado Procurement Code or these rules require a written determination, the person required to prepare the determination may delegate its preparation.

R-24-101-201-02 Content

Each written determination shall set out sufficient facts, circumstances, and reasoning to substantiate the specific determination which is made.

R-24-101-201-03 Supporting Information

The person responsible for the execution of a written determination may require other state personnel, including technical personnel and appropriate personnel in the using agency, to furnish, in an accurate and adequate fashion, any information pertinent to the determination.

R-24-101-201-04 Retention

Each written determination shall be filed in the solicitation or contract file to which it applies, and shall be retained as part of such file for so long as the file is required to be maintained, as provided in Section 24-80-101 through 24-80-112.

PART 3 DEFINITIONS

R-24-101-301 Terms Defined in Colorado Procurement Code

(a) As used throughout these rules, words and terms defined in the Colorado Procurement Code shall have the same meaning as in the Code.

(b) "Commodity" as used in these Rules shall have the same meaning as "product".

(c) "Product" means anything that is produced or manufactured and that may be obtained, or needs to be obtained, by the State, either in and of itself, or in conjunction with services. As used in these Rules, "Product," "Supplies," and "Commodity" shall have essentially the same meaning.

PART 4 PROCUREMENT RECORDS AND INFORMATION

(See Statute)

ARTICLE 102 PROCUREMENT ORGANIZATION

PART 1 EXECUTIVE DIRECTOR, DEPARTMENT OF ADMINISTRATION

(See Statute)

PART 2 DIVISION OF PURCHASING

R-24-102-201 Creation of the Division of Purchasing

(See Statute)

R-24-102-201 State Purchasing Director

The State Purchasing Director referred to in these rules shall be appointed by the Executive Director of the Department of Personnel and shall have these powers and duties through delegation from the Executive Director. Any powers and duties not so delegated remain with the Executive Director.

R-24-102-201 State Purchasing Director

(See Statute)

R-24-102-202-01 Mandatory and Permissive Price Agreements

(a) The State Purchasing Director may issue mandatory or permissive price agreements for supplies or services for use by all state agencies and institutions.

(b) Mandatory price agreements shall be used by all agencies and institutions if and when the supplies or services are needed. Any agency or institution desiring to purchase supplies or services of a similar nature other than those on a mandatory price agreement must request and receive written authorization to do so by the Division of Purchasing.

(c) Permissive price agreements may be used by all agencies and institutions if and when the supplies or services are needed. If supplies or services contained on permissive price agreements are not used by agencies or institutions, the needs must be submitted for competition as provided by these rules.

R-24-102-202.5-01 Electronic Procurement Systems.

Definitions

(a) "Construction Project," for purposes of Rule R-24-102-202.5-04, means any procurement that meets the definition of a "public project," as defined in §24-92-102(8) CRS, or any procurement that meets the definition of "construction" as defined in §24-101-301 CRS.

(b) "Electronic Procurement Systems" means database and notification systems" created pursuant to §24-102-202.5 CRS.

R-24-102-202.5-02 Use of Electronic Procurement Systems - Goods and Services

An Electronic Procurement System shall be the notification method for competitive solicitations for goods and services made through Invitations for Bids (IFB), Requests for Proposals (RFP), and Documented Quotes (DQ).

R-24-102-202.5-03 Electronic Procurement Systems Fees

The fee structure for use of Electronic Procurement Systems shall be set by the State Purchasing Director.

R-24-102-202.5-04 Use of Electronic Procurement Systems - Notice of Construction Projects and Professional Services

For all construction projects and for all procurements for professional service (as defined in §24-30-1402(6) CRS) for which competitive notification or solicitation procedures are required, a notification must be placed on an Electronic Procurement System, and the award must be posted on an Electronic Procurement System.

(a) Detailed specifications shall not be included in the notice, and all information must be open to public view, without password protection.

(b) Contractors/bidders need not be registered for an Electronic Procurement System in order to be deemed responsive.

(c) This requirement is in addition to, and does not supersede, any advertisement, notification, or solicitation procedures required by statute or rule.

R-24-102-204 Delegation of Authority by State Purchasing Director

(See Statute)

R-24-102-204-01 Purchasing Delegation Limits

Purchasing delegations will have limits as described in Rule R-24-103-204 and all associated subparagraphs. An agency that receives limited purchasing authority shall be referred to as a "Group I Agency", and an agency that receives an unrestricted purchasing delegation shall be referred to as a "Group II Agency".

R-24-102-204-02 Delegation Criteria

Recognizing the importance of local control to meet local needs, delegation of purchasing authority is encouraged where efficient.

(a) Minimum criteria to receive a Group I purchasing delegation shall include:

(i) a signed delegation agreement between the Department and the delegated agency or the governing board of a college or university, and

(ii) successful completion by staff of training by the Division of Purchasing, and

(iii) use of an Electronic Procurement System.

(b) Minimum criteria to receive a Group II purchasing delegation shall include:

(i) a signed delegation agreement between the Department and the delegated agency or the governing board of a college or university, and

(ii) demonstrated need, and

(iii) demonstrated existing staff competency in state purchasing, and

(iv) an automated purchasing system, and

(v) use of an Electronic Procurement System.

R-24-102-206 Contract Performance Outside the United States or Colorado – Notice - Penalty

R 24-102-206-01 Department –Services Contracts

The Department will collect the data required by this section for all services contracts, including contracts for construction services.

R24-102-206-02 Written Notice and Post of Notice Timeline

Pursuant to §24-102-206(3) CRS, a governmental body will provide written notice to the Department of Personnel within 30 calendar days from the vendor’s notice to the governmental body. Pursuant to §24-102-206(5) CRS, the Executive Director will post on the official web site of the Department any notice that a vendor provides to a governmental body within 30 calendar days of notice from the governmental body.

PART 3 ORGANIZATION OF PUBLIC PROCUREMENT

(See Statute)

PART 4 STATE PROCUREMENT RULES
(See Statute)

PART 5 COORDINATION

(See Statute)

ARTICLE 103 SOURCE SELECTION AND CONTRACT FORMATION

PART 1 DEFINITIONS

(See Statute)

R24-103-101-01 Terms Defined in This Article.

As used in this Article, unless the context otherwise requires:

(a) "Acceptable Bid" means an offer submitted by any person in response to an Invitation for Bid issued by the State that is in compliance with the solicitation terms and conditions and within the requirements of the plans and specifications described and required therein.

(b) "Adequate Competition" exists if a competitive sealed bid or competitive sealed proposal has been conducted and at least two responsible and responsive offerors have independently competed to provide the State's needed product or services. If the foregoing conditions are met, price competition shall be presumed to be "adequate" unless the procurement officer determines, in writing that such competition is not adequate.

(c) "Alternate Bid" means an offer submitted by any person in response to an Invitation for Bid issued by the State that is in essential compliance with the solicitation terms and conditions but which may offer an alternate that does not significantly deviate from the required specifications contained in the solicitation. The soliciting agency would be responsible for determining whether an alternate bid is acceptable.

(d) "Colorado Labor" shall have the same definition as used in §8-17-101(2)(a), CRS.

(e) "Competitive Negotiation" means the process of discussion and issue resolution between a procurement official and a prospective vendor in order to arrange for the providing of a product or service needed by the State. If more than one vendor is available for such negotiation, the needs of the State must be clearly defined in advance of any negotiations, via a specification that details fully the State's intended procurement.

(f) "Cost of Ownership Life Cycle Analysis" means an accounting of the estimated total cost of ownership, including but not limited to: initial costs, operational costs, longevity, stranded utility costs, and service and disposal costs, along with an assessment of life-cycle environmental, health and energy impacts resulting from new material extraction, transportation, manufacturing, use, and disposal.

(g) "Documented Quotation" or "Request for Quotation (RFQ)" is a process of soliciting informally for fulfilling the State's need for a specific product(s) or service(s) and receiving and evaluating vendor responses. The dollar limits for use of documented quotations shall be as stated in the Section on Small Purchases and shall be conducted only by a procurement officer or designee.

(h) "Environmentally Preferable Products" -means products or services that have a lesser or reduced adverse effect on human health and the environment when compared with competing products or services that serve the same purpose. The product or service comparison may consider such factors as the availability of any raw materials used in the product or service being purchased and the availability, use, production, safe operation, maintenance, packaging, distribution, disposal, or recyclability of the product or service being purchased.

(i) "Nationally Recognized Third-party Certification Entity" means a voluntary, multiple criteria-based program that awards a certification after independently reviewing the product or service on its cost of ownership and life cycle and meets criteria for overall environmental preferability and product function characteristics. The Colorado Energy Office or any successor office maintains a listing of eligible entities.

(j) "Non-Resident bidder" shall have the same meaning as in §8-19-102(1), CRS.

(k) "Public Works Project" shall have the same definition as "Public Project" as defined in §8-19-102(2), CRS.

(l) "Request for Proposals (RFP)" is the commonly used name for competitive sealed proposals. Formal RFPs shall be used in all cases where the total expected cost of the procurement is in excess of the small purchase threshold and the provisions of §24-101-203 CRS apply. Procurements for which the resulting contract is expected to be for more than one fiscal period must take into account the costs for the full life of any resulting contract to determine total expected cost.

(m) "Resident bidder" shall have the same definition as in §8-19-102(3), CRS.

(n) "Responsible Vendor" means a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.

(o) "Sealed" means that the Bid, Proposal, or Best Value Bid must be submitted in a manner that:

(i) Ensures that the contents of the bid, proposal, or best value bid cannot be opened or viewed before the formal bid opening without leaving evidence that the document has been opened or viewed; and

(ii) Ensures that the document cannot be changed, once received by the State, without leaving evidence that the document has been changed: and

(iii) Bears a physical or electronic signature evincing an intent by the bidder or offeror to be bound. An electronic signature must comply with the definitions and requirements set forth in the Government Electronic Transactions Act, §24-71.1-101 et seq. C.R.S. and its implementing rules; and

(iv) Records, manually or electronically, the date and time the bid, proposal, or best value bid is received by the state and that cannot be altered without leaving evidence of the alteration.

(p) "Substitute Bid" means an offer submitted by any person in response to an Invitation for Bid that is not in substantive compliance with the terms and conditions and specifications of the solicitation as issued. A substitute bid, by this definition, would generally be considered non-responsive to the requirements of the solicitation and would serve the sole purpose of advising the soliciting agency that a different specification could be used to provide the desired or similar product or service. The soliciting agency would be responsible for determining whether the substitute language would be justification for canceling the bid and re-soliciting.

PART 2 METHODS OF SOURCE SELECTION

R-24-103-201 Methods of Source Selection

(See Statute)

R-24-103-202a Competitive Sealed Bidding (other than construction)

R-24-103-202a-01 Invitation for Bids

(a) Bidding Policy. It shall be the policy of the State of Colorado to purchase products, commodities, services, and construction in a manner that affords businesses a fair and equal opportunity to compete.

(b) Specifications. Purchasing agencies shall issue product, supply, service, or construction specifications which are not unduly restrictive. Brand name specifications, brand name or equal specifications, or qualified products lists shall only be used in accordance with the provisions of Rules R-24-104-202, -01, -02.

Purchasing agencies may utilize life cycle costing and/or value analysis in determining the lowest responsible bidder. In bids where life cycle costing or value analysis is to be used, the specifications shall indicate the procedure and valuation factors to be considered.

When appropriate, specifications issued and/or used by the federal government, other public procurement units or professional organizations may be referenced by the State. Bidders may be required to certify that these standardized specifications have been met.

(c) Solicitation Time. Except as provided under emergency procedures, the minimum time for the bid opening date shall be not less than 14 calendar days after posting the solicitation on an Electronic Procurement System. When special requirements or conditions exist, the head of a purchasing agency may lengthen or shorten the bid time, but in no case shall the time cycle be shortened to reduce competition. Solicitation periods of less than 14 calendar days shall be documented by the head of the purchasing agency as to why a reduced bid period was required.

R-24-103-202a-02 Pre-Bid Conferences

Pre-bid conferences may be conducted to explain the procurement requirements if they are provided for in the Invitation for Bid. The conference should be held long enough after the Invitation for Bid has been issued, to allow bidders to become familiar with it, but with adequate time before bid opening to allow bidders consideration of the conference results in preparing their bids. Nothing stated at the pre-bid conference shall change the Invitation for Bids unless a change is made by written amendment, posted on an Electronic Procurement System.

R-24-103-202a-03 Amendments to Invitations for Bids

Amendments to Invitations for Bids shall be identified as such and may require that the bidder acknowledge receipt of all amendments issued. The amendment shall reference the portions of the Invitation for Bids it amends. Amendments shall be posted on an Electronic Procurement System with sufficient time to allow prospective bidders to consider them in preparing their bids. If the time set for bid opening will not permit such preparation prior to bid opening, such time shall be increased in the amendment.

R-24-103-202a-04 Withdrawal of Bids

(a) Withdrawal of Bids Prior to Bid Opening. Any bid may be withdrawn from the appropriate purchasing agency prior to the specified bid opening date and time.

(b) Withdrawal of Bids after Bid Opening but Prior to Award. The Director or head of a purchasing agency may allow a bid to be withdrawn after bid opening but prior to award provided:

(i) the bidder provides evidentiary proof that clearly and convincingly demonstrates that a mistake was made in the costs or other material matter provided; or the mistake is clearly evident on the face of the bid; and

(ii) it is found to be (by the Director or head of the purchasing agency) unconscionable not to allow the bid to be withdrawn.

(c) Procedure. Bids may be withdrawn by written notice received in the office designated in the Invitation for Bids prior to the time set for bid opening.

R-24-103-202a-05 Telephone Bids

Telephone bids from vendors will not be accepted, except as allowed in Rule R-24-103-204-03 and unless the Director or head of a purchasing agency makes a written determination that market conditions are of such nature that it is in the best interest of the State to solicit telephone bids.

Comment: An example of when the Director or head of a purchasing agency may approve telephone bids is in the procurement of petroleum fuels where the market price may change on a daily basis.

R-24-103-202a-06 Electronic Bids

Bids may be submitted electronically when: The terms of the solicitation expressly permit electronic submission and the requirements of one of the following statutes or rules are met: Rule R-24-103-101-01(h), §24-103-204 CRS, or §24-103-206 CRS.

R-24-103-202a-07 Timeliness of Bids

Bids received after the bid opening time shall not be opened, but shall be rejected as a late bid. The following exceptions are permitted by the director or head of a purchasing agency:

(a) If prior to a specified opening time and date, the mail, either directly by the post office or by internal distribution system, has not been delivered, any bid received by the next same-day delivery may be accepted if it is reasonable to believe the bid response was in the delivery process which was not completed prior to the opening time and date. All Invitations for Bids utilizing this exception must so state in the terms and conditions of the Invitation for Bids.

(b) In the event of a labor unrest (strike, work slowdown, etc.) which may affect mail delivery, the Director is authorized to develop and issue emergency procedures.

(c) In any other situation that is beyond the control of the State or the vendor, the director or the head of a purchasing agency shall rule on the

acceptability of the bid. However, under no circumstances shall a late bid be accepted if the bid was still within the control of the vendor at the time the bid opening actually occurred.

In those situations where the late bid was not in the control of the vendor at the time of the bid opening, the director or head of a purchasing agency shall not accept the late bid unless he/she further finds that extraordinary circumstances exist. The responsibility for ensuring that the bid is received on time rests with the vendor, and the reasonably foreseeable problems inherent in the delivery of bids (e.g. slow messengers, slow mail service, weather, bad directions, mechanical failures, traffic, etc.) are not extraordinary circumstances permitting acceptance of late bids.

R-24-103-202a-08 Bid Receipt, Opening, and Recording

(a) Receipt. Upon receipt, each bid and modification shall be time-stamped by machine or by hand and shall be stored in a secure place until bid opening time. Bids and modifications shall not be opened upon receipt, except that unidentified bids and modifications may be opened for identification purposes. The purchasing employee will immediately reseal the bid or modification and attest in writing that the employee has not revealed the contents of the envelope.

(b) Opening and Recording. All bid openings shall be open to the public and/or interested parties. Bids and modifications shall be opened, in the presence of one or more witnesses, as soon as possible after the time, and at the place, designated in the Invitation for Bids. The name of each bidder, the bid price(s) (unless otherwise provided in the Invitation for Bids), and other information deemed appropriate by the Procurement Officer shall be read aloud at the time of bid opening.

Reading of all bid item prices may not be reasonable or desired (e.g., in the case of lengthy or complex bids). The decision not to read all bid prices shall be made by the Procurement Officer and shall be stated in the Invitation for Bids.

The name of each bidder, amount of bid, delivery, names(s) of witness(es) and other relevant information shall be entered into the record and the record shall be available for public inspection.
Prior to award, copies of pricing information not read aloud at the bid opening shall be made reasonably available for inspection, if requested. Other information related to a bid, or a bidder's responsiveness, may be withheld from inspection until such determinations have been made.
After award, all bid documents, and a complete bid analysis, shall be open to public inspection except to the extent the State has approved a bidder's request that trade secrets or other proprietary data be held confidential as set forth below. Material so designated shall accompany the bid and shall be readily separable from the bid in order to facilitate public inspection of the nonconfidential portion of the bid.

(c) Confidential Data. The Procurement Officer shall determine the validity of any written requests for nondisclosure of trade secrets and other proprietary data. If the parties do not agree as to the

disclosure of data, the Procurement Officer shall inform the bidder(s) in writing what portions of the bids will be disclosed, and that unless the bidder protests under Article 109, Part 1, of the Colorado Procurement Code, the bids will be so disclosed.

After award, the bids shall be open to public inspection subject to any continued prohibition on the disclosure of confidential data.

R-24-103-202a-09 Mistakes in Bids

(a) Confirmation of Bid. When it appears from a review of the bid that a mistake has been made, the bidder should be requested to confirm the bid. Situations in which confirmation should be requested include obvious, apparent errors on the face of the bid or a bid unreasonably lower than the other bids submitted. If the bidder alleges mistake, the bid may be withdrawn if the conditions set forth in this section are met.

(b) Minor Informalities. Minor informalities are matters of form rather than substance evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders; that is, the effect on price, quantity, quality, delivery, or contractual conditions is negligible. The Procurement Officer may waive such informalities or allow the bidder to correct them depending on which is in the best interest of the state. Examples include the failure of a bidder to:

(i) return the number of signed bids required by the Invitation for Bids;

(ii) sign the bid, but only if the unsigned bid is accompanied by other material indicating the bidder's intent to be bound;

(iii) acknowledge receipt of an amendment to the Invitation for Bids, but only if:

(A) It is clear from the bid that the bidder received the amendment and intended to be bound by its terms; or

(B) the amendment involved had a negligible effect on price, quantity, quality, or delivery.

(C) Mistakes Where Intended Correct Bid Is Evident. If the mistake and the intended correct bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices and transposition errors.

(D) Mistakes Where Intended Correct Bid Is Not Evident. A bidder may be permitted to withdraw a low bid if the bidder submits proof of evidentiary value which clearly and convincingly demonstrates that a mistake was made.

(E) Determinations Required. Any decision to permit or deny correction or withdrawal of a bid under this section shall be supported by a written

determination prepared by the director or head of a purchasing agency or their designee.

R-24-103-202a-10 Bid Evaluation and Award

All products and services shall be evaluated against the specifications and/or brand names used as a reference and other evaluation criteria in the Invitation for Bid.

For example, the following factors may be considered in evaluating any bid response: delivery date after receipt of order; cash discounts; warranties (type and length); future availability; results of product testing; local service; cost of maintenance agreements; future trade-in value or availability of repurchase agreement; availability of training courses; financial terms if not a cash purchase; space limitations; esthetics; adaptability to environment; cost of operation (if any); safety and health features relating to codes, regulations, or policies.

(a) Product Acceptability. The Invitation for Bids may require the submission of bid samples, descriptive literature, technical data, or other material necessary to determine product acceptability. If bid responses are received that do not contain the required submission data, they may be rejected as nonresponsive. The Invitation for Bids may also provide for accomplishing any of the following prior to award:

(i) inspection or testing of a product prior to award for such characteristics as function, quality or workmanship;

(ii) examination of such elements as appearance, finish, taste, or feel; or

(iii) other examinations to determine whether it conforms with other specifications.

The acceptability evaluation is not conducted for the purpose of determining whether one bidder's item is superior to another but only to determine whether a bidder's offering will meet the State's needs as set forth in the Invitation for Bids. Any bidder's offering which does not meet the acceptability requirements shall be rejected as nonresponsive.

(b) Determination of Lowest Bidder. Following determination of product acceptability, bids shall be evaluated to determine which bidder offers the lowest cost to the State in accordance with specifications. They may be evaluated in accordance with value analysis or life cycle cost formulas. If such formulas are to be used, they shall be objectively measurable and shall be set forth in the Invitation for Bids. Such evaluation factors need not be precise predictors of actual future costs, but to the extent possible they shall:

(i) be reasonable estimates based upon information the State has available concerning future use; and

(ii) treat all bids equitably.

(c) Restrictions. A contract may not be awarded to a bidder submitting a higher quality item than that designated in the Invitation for Bids unless such bidder is also the lowest bidder as determined by value analysis or life cycle cost formulas as permitted in this section.

(d) Environmentally Preferable Products. The provisions of §24-103-207.5 CRS which require a preference for environmentally preferable products apply to the award of contracts under this section. The purchasing preference applies to products and services that have a lesser or reduced adverse effect on human health and the environment than comparable competing products. When the conditions of §24-103-207.5 CRS subsections (3)(a) through (f) have been met, agencies shall award bids for environmentally preferable products or services that cost no more than five percent more than the lowest bid. However, agencies may award the contract to a bidder who offers environmentally preferable products and services which exceed the lowest bid by more than five percent if a cost of ownership life-cycle analysis establishes that long term savings to the State will result. In addition, each purchasing agency must ensure that the purchase can be accommodated within an agency’s existing budget.

R-24-103-202a-11 Disposition of Bid Surety

If a bid is withdrawn in accordance with this section, any bid surety shall be returned to the bidder in a timely manner.

R-24-103-202a-12 Multi-Step Sealed Bidding

(a) Definition. Multi-step sealed bidding is a two-phase process consisting of a technical first phase composed of one or more steps in which bidders submit un-priced technical offers to be evaluated by the State. The second phase will consider only those bidders whose technical offers were determined to be acceptable during the first phase and, therefore, their price bids will be opened and considered. It is designed to obtain the benefits of competitive sealed bidding by award of a contract to the lowest responsive, responsible bidder, and at the same time obtain the benefits of the competitive sealed proposals procedure through the solicitation of technical offers and the conduct of discussions to evaluate and determine the acceptability of technical offers.

(b) Conditions for Use. The multi-step sealed bidding method may be used when it is not practical to prepare, initially, a definitive purchase description which would be suitable to permit an award based on price.

R-24-103-202a-13 Records

All documents relating to the modification or withdrawal of bids shall be made a part of the appropriate procurement file.

R-24-103-202b Competitive Sealed Bidding - Construction

R-24-103-202b-01 General Provisions

(a) Extension of Time for Bid or Proposal Acceptance. After opening bids, the Procurement Officer may request low bidders to extend the time during which the State may accept their bids, provided that no other change is permitted. The reasons for requesting such extension shall be documented.

(b) One Bid Received. If only one responsive bid is received in response to an Invitation for Bid (including multi-step bidding), an award may be made to the single bidder if the Procurement Officer finds that the price submitted is fair and reasonable and that either other prospective bidders had reasonable opportunity to respond, or there is not adequate time for re-solicitation. Otherwise the bid may be rejected pursuant to the provisions of Rule R-24-103-301, (Cancellation of Solicitations; Rejection of Bids or Proposals) and

(i) new bids may be solicited;

(ii) the proposed procurement may be cancelled; or

(iii) If the Director or head of a purchasing agency determines in writing that the need for the construction continues but that the price of the one bid is not fair and reasonable and there is no time for re-solicitation or re-solicitation would likely be futile, the procurement may then be conducted under Rule R-24-103-205 (Sole Source Procurement) or Rule R-24-103-206 (Emergency Procurements), as appropriate.

(c) Multiple or Alternate Bids. The solicitation shall prohibit multiple or alternate bids unless such bids are specifically provided. When prohibited the multiple or alternate bids shall be rejected although a clearly indicated base bid will be considered for award as though it were the only bid or offer submitted by the bidder. The provisions of this Section shall be set forth in the solicitation, and if multiple or alternate bids are allowed, it shall specify their treatment.

(d) Combining Bids or Offers Not Acceptable. Any bid or offer which is conditioned upon receiving award of both the particular contract being solicited and another State contract shall be deemed nonresponsive and not acceptable.

(e) Affiliates are prohibited from submitting bids for the same contract. Affiliates are defined as any individuals, partnerships, corporations, joint ventures, companies, firms, contractors or other legal entities, if directly or indirectly, either (i) one controls or can control the other, or (ii) a third controls or can control both.

(f) Purchase of Items Separately from Construction Contract. The Director or head of a purchasing agency is authorized to determine whether a supply item or group of supply items shall be included as a part of, or procured separately from, any contract for construction.

(g) Standard Forms. All construction bidding and contracting procedures shall utilize standard state forms which are available on-line from the website of the Office of the State Architect.

Any changes or modifications of the state forms, including General Conditions of the Contract, shall not be deemed valid unless issued in the form of Supplementary General Conditions and approved by the Principal Representative, as defined in the state contract, and the Office of the State Architect.

(h) Competitive Sealed bidding may be used on projects that have no federal funding involved, pursuant to §24-92-103, CRS.

R-24-103-202b-02 Invitation for Bids

(a) Content. The Invitation for Bids shall include the following:

(i) instructions and information to bidders concerning the bid submission requirements, including the time and closing date for submission of bids, the address of the office to which bids are to be delivered, the maximum time for bid acceptance by the State, and any other special information.

(ii) the purchase description, evaluation factors, delivery or performance schedule, and inspection and acceptance requirements not included in the purchase description; and

(iii) the contract terms and conditions, including warranty and bonding or other security requirements, as applicable.

(b) Incorporation by Reference. The Invitation for Bids may incorporate documents by reference provided that the Invitation for Bids specifies where such documents can be obtained.

(c) Acknowledgment of Addenda. The Invitation for Bids shall require the acknowledgment of the receipt of all addenda issued.

(d) Bidding Time. Bidding time is the period of time between the date of the Advertisement for Bids and the date set for opening of bids. In each case bidding time will be set up to provide bidders a reasonable time to prepare their bids, but in no event shall this time be less than fourteen days as provided in Section §24-103-202(3)CRS.

R-24-103-202b-03 Bidder Submissions

(a) Bid Form. The Invitation for Bids shall provide a form which shall include space in which the bid price shall be inserted and which the bidder shall sign and submit along with all other necessary submissions.

Bidders must execute and submit bids on the form as prescribed by the Office of the State Architect, and as specified by the Invitation for Bids. A bid received on any other form will be cause for that bid being deemed unresponsive.

(b) Telegraphic Bids. Telegraphic Bids and mailgrams will not be accepted or considered, but will be rejected.

R-24-103-202b-04 Public Notice

(a) Distribution. Notice of the Invitation for Bids will be advertised according to the provisions of Section §§24-70-101 through 107 CRS and these Rules.

The Notice will be advertised in a newspaper of general circulation which is printed and/or published electronically in the municipality nearest the location of the construction site as described in the Invitation for Bids or in an electronic medium approved by the Executive Director of the Department pursuant to §24-92-103(3)CRS. Publication of the Notice shall occur twice, one week apart. Additionally, a copy of the Advertisement for Bids shall be sent to the Colorado Minority Business Development Agency, with a set of Bid Documents attached thereto. Nothing in these rules shall prevent the Procurement Officer from advertising or otherwise giving public notice in additional media and locations; and/or more than twice as described above.

The Notice of the Invitation for Bids shall include the following information and statements:

(i) date, time and location of the bid opening

(ii) project number, name and location

(iii) project time of completion

(iv) location where Bidding Documents may; be obtained

(v) deposit required, if any, for a complete set of Contract Documents

(vi) "Preference shall be given to Colorado resident bidders and for Colorado labor as provided by law."

(vii) "The rate of wages to be paid for all laborers and mechanics shall be in accordance with the applicable Davis-Bacon rates of wages for the project. Such rates will be specified in the General Documents."

(viii) any other appropriate information. A copy of the Invitation for Bid shall be made available for public inspection at the Office of the State Architect.

(b) Pre-Bid Conferences. Pre-bid conferences may be conducted to explain the procurement requirements. They shall be announced to all prospective bidders known to have received an Invitation for Bids. The conference should be held long enough after the Invitation for Bids has been issued to allow bidders to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in preparing their bids. Nothing stated at the pre-bid conference shall change the Invitation for Bids unless a change is made by written addendum as provided in Rule R-24-103-202b-05 (Addenda to Invitations for Bids) and the Invitation for Bids and the notice of the pre-bid conference shall so provide.

R-24-103-202b-05 Addenda to Invitation for Bids

(a) Form. Addenda to Invitations for Bids shall be identified as such and shall require that the bidder acknowledge receipt of all amendments issued. The addenda shall reference the portions of the Invitation for Bids it amends.

(b) Distribution. Addenda shall be sent to all prospective bidders known to have received an Invitation for Bids.

(c) Timeliness. Addenda shall be distributed within a reasonable time to allow prospective bidders to consider them in preparing their bids.

R-24-103-202b-06 Pre-Opening Modification or Withdrawal of Bids

(a) Procedure. Bids may be modified or withdrawn by written notice received in the office designated in the Invitation for Bids prior to the time set for bid opening.

(b) Disposition of Bid Security. Bid security, if any, shall be returned to the bidder when withdrawal of the bid is permitted.

(c) Records. All documents relating to the modification or withdrawal of bids shall be made a part of the appropriate procurement file.

R-24-103-202b-07 Timeliness of Bids

Bids received after the bid opening time shall not be opened, but shall be rejected as a late bid. The following exceptions are permitted by the director or head of a purchasing agency:

(a) If prior to a specified opening time and date, the mail, either directly by the post office or by internal distribution system, has not been delivered, any bid received by the next same-day delivery may be accepted if it is reasonable to believe the bid response was in the delivery process which was not completed prior to the opening time and date. All invitations for bids utilizing this exception must so state in the terms and conditions of the invitation for bids.

(b) In the event of a labor unrest (strike, work slow down, etc.) which may affect mail delivery, the director is authorized to develop and issue emergency procedures.

(c) In any other situation that is beyond the control of the state or the vendor, the director or the head of a purchasing agency shall rule on the acceptability of the bid. However, under no circumstances shall a late bid be accepted if the bid was still within the control of the vendor at the time the bid opening actually occurred.

In those situations where the late bid was not in the control of the vendor at the time of the bid opening, the director or head of a purchasing agency shall not accept the late bid unless he/she further finds that extraordinary circumstances exist. The responsibility for ensuring that the bid is received on time rests with the vendor, and the reasonably foreseeable problems inherent in the delivery of bids (e.g. slow messengers, slow mail service, weather, bad directions, mechanical

failures, traffic, etc.) are not extraordinary circumstances permitting acceptance of late bids.

R-24-103-202b-08 Receipt, Opening, and Recording of Bids

(a) Receipt. Upon receipt, all bids and modifications will be date and time-stamped but not opened.

(b) Opening and Recording. Bids and modifications shall be opened publicly, in the presence of one or more witnesses, at the time and place designated in the Invitation for Bids. The names of the bidders, the bid price, attendees received, alternatives, bid security, time of completion, and such other information as is deemed appropriate by the Procurement Officer, shall be read aloud or otherwise made available. Such information also shall be recorded at the time of bid opening; that is, the bids shall be tabulated or a bid abstract made. The names and addresses of required witnesses shall also be recorded at the opening. The opened bids shall be recorded at the opening. The opened bids shall be available for public inspection except to the extent the bidder designates trade secrets or other proprietary data to be confidential as set forth in subsection R-24-103-202b-08(c) of this Rule. Material so designated shall accompany the bid and shall be readily separable from the bid in order to facilitate public inspection of the nonconfidential portion of the bid.

(c) Confidential Data. The Procurement Officer shall examine the bids to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data identified in writing. Such requests shall be submitted by the bidder prior to the bid opening under separate cover. If the parties do not agree as to the disclosure of data, the Procurement Officer shall inform the bidders in writing what portions of the bids will be disclosed and that, unless the bidder protests under Article 109 (Remedies) of the Colorado Procurement Code, the bids will be so disclosed. The bids shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.

R-24-103-202b-09 Mistakes in Bids

(a) General. Correction or withdrawal of a bid because of an inadvertent, non-judgmental mistake in the bid requires careful consideration to protect the integrity of the competitive bidding system, and to assure fairness. If the mistake is attributable to an error in judgment, the bid may not be corrected. Bid correction or withdrawal by reason of a non-judgmental mistake is permissible but only to the extent it is not contrary to the interest of the State or the fair treatment of other bidders.

(b) Mistakes Discovered Before Opening. A bidder may correct mistakes discovered before bid opening by withdrawing or correcting the bid as provided in Rule R-24-103-202b-06 (Pre-Opening Modification or Withdrawal of Bids).

(c) Confirmation of Bid. When it appears from a review of the bid that a mistake has been made, the bidder should be requested to confirm the bid. Situations in which confirmation should be requested include obvious,

apparent errors on the face of the bid or a bid reasonably lower than the other bids submitted. If the bidder alleges mistake, the bid may be corrected or withdrawn if the conditions set forth in subsection R-24-103-202b-09(d)(i) through R-24-103-202b-09(d)(iii) of this Rule are met.

(d) Mistakes Discovered After Opening But Before Award. This subsection sets forth procedures to be applied in three situations described in subsection R-24-103-202b-09(d)(i) through R-24-103-202b-09(d)(iii) below in which mistakes in bids are discovered after opening but before award.

(i) Minor Informalities. Minor informalities are matters of form rather than substance evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice or other bidders. The Procurement officer shall waive such informalities or allow the bidder to correct them depending on which is in the best interest of the State.

(ii) Mistakes Where Intended Correct Bid Is Evident. If the mistake and the intended correct bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.

(iii) Mistakes Where Intended Correct Bid Is Not Evident. A bidder may be permitted to withdraw a low bid if:

(A) a mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident, or

(B) the bidder submits proof of evidentiary value which clearly and convincingly demonstrates that a mistake was made.

(e) Mistakes Discovered After Award. Mistakes shall not be corrected after award of the contract except where the Director or the head of a purchasing agency makes a written determination that it would be unconscionable not to allow the mistake to be corrected or the bid withdrawn.

(f) Determination Required. When a bid is corrected or withdrawn, or correction or withdrawal is denied under subsections R-24-103-202b-09(d) or R-24-103-202b-09(e) of this Rule, the Director or the head of a purchasing agency shall prepare a written determination showing that the relief was granted or denied in accordance with these regulations, except that the Procurement Officer shall prepare the determination required under subsection R-24-103-202b-09(i) of this Rule.

R-24-103-202b-10 Bid Evaluation and Award

(a) General. The contract is to be awarded "to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids." (§§24-103-202 (5) and (7) CRS). The Invitation for Bids shall set forth the requirements and criteria which will be used to determine the lowest requirements or criteria that are not disclosed in the Invitation for Bid.

(b) Product Acceptability. The Invitation for Bids shall set forth the evaluation criteria to be used in determining product acceptability. It may require the submission of bid samples, descriptive literature, technical data, or other material. It may also provide for:

(i) inspection or testing of a product prior to award for such characteristics as quality or workmanship;

(ii) examination of such elements as appearance, finish, taste, or feel; or

(iii) other examinations to determine whether it conforms with any other purchase description requirements.

The acceptability evaluation is not conducted for the purpose of determining whether one bidder's item is superior to another, but only to determine that a bidder's offering is acceptable as set forth in the Invitation for Bids. Any bidder's offering which does not meet the acceptability requirements shall be rejected.

(c) Determination of Lowest Bidder. Following determination of product acceptability, if any is required, bids will be evaluated to determine which bidder offers the lowest cost to the State in accordance with the evaluation criteria set forth in the Invitation for Bids. Only objectively measurable criteria which are set forth in the Invitation for Bids shall be applied in determining the lowest bidder.
Examples of such criteria include, but are not limited to, transportation cost, and ownership or life-cycle cost formulae. Evaluation factors need not be precise predictors of actual future cost, but to the extent possible such evaluation factors shall:

(i) be reasonable estimates based upon information the State has available concerning future use; and

(ii) treat all bids equitably.

(d) Restrictions. A contract may not be awarded to a bidder submitting a higher quality item than that designated in the Invitation for Bids, unless such bidder is also the lowest bidder as determined by value analysis or life-cycle cost formulas as permitted in this Section.

(e) Low Tie Bids. Tie bids are low responsive bids from responsible bidders that are identical in price and which meet all the requirements and criteria set forth in the Invitation for Bids. In the discretion of the Director or the head of a purchasing agency, award shall be made in any permissible manner that will discourage tie bids. The office of the Attorney General shall be notified of any tie bids in an amount greater than $1,000.

R-24-103-202b-11 Multi-Step Sealed Bidding.

(a) Definition. Multi-step sealed bidding is a two-phase process consisting of a technical first phase composed of one or more steps in

which bidders submit un-priced technical offers to be evaluated by the State, and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase have their price bids considered. It is designed to obtain the benefits of competitive sealed bidding by award of a contract to the lowest responsive, responsible bidder, and at the same time obtain the benefits of the competitive sealed proposals procedure through the solicitation of technical offers and the conduct of discussions to evaluate and determine the acceptability of technical offers.

(b) Conditions for Use. The multi-step sealed bidding method will be used when it is not practical to prepare initially a definitive purchase description which will be suitable to permit an award based on price.

(c) Procedure for Phase One of Multi-Step Sealed Bidding.

(i) Form. Multi-step sealed bidding shall be initiated by the issuance of an Invitation for Bids in the form required by Rule R-24-103-202b-02 (Invitation for Bids), except as hereinafter provided. In addition to the requirements set forth in Rule R-24-103-202b-02, the multi-step Invitation for Bids shall state:

(A) that un-priced technical offers are requested;

(B) whether price bids are to be submitted at the same time as un-priced technical offers;
if they are, such price bids shall be submitted in a separate sealed envelope;

(C) that it is a multi-step sealed bid procurement, and priced bids will be considered only in the second phase and only from those bidders whose un-priced technical offers are found acceptable in the first phase;

(D) the criteria to be used in the evaluation of un-priced technical offers;

(E) that the State, to the extent the Procurement Officer finds necessary, may conduct oral or written discussions of the un-priced technical offers;

(F) that bidders may designate those portions of the un-priced technical offers which contain trade secrets or other proprietary data which are to remain confidential; and

(G) that the item being procured shall be furnished generally in accordance with the bidder's technical offer as found to be finally acceptable and shall meet the requirements of the Invitation for Bids.

(ii) Addenda to the Invitation for Bids. After receipt of un-priced technical offers, addenda to the Invitation for Bids shall be distributed only to bidders who submitted un-priced technical offers or to amend those submitted. If, in the opinion of the Procurement Officer, a contemplated addendum will significantly change the nature of the procurement, the Invitation for Bids shall be canceled in accordance with Rule R-24-103-301

(Cancellation of Solicitations; Rejections of Bids or Proposals) of this Article and a new Invitation for Bids issued.

(iii) Receipt of Handling of Un-priced Technical Offers. Un-priced technical offers shall not be opened publicly but shall be opened in front of two or more procurement officials. Such offers shall not be disclosed to unauthorized persons. Bidders may request non-disclosure of trade secrets and other proprietary data identified in writing.

(iv) Evaluation of Un-Priced Technical Offers. The un-priced technical offers submitted by bidders shall be evaluated solely in accordance with the criteria set forth in the Invitation for Bids. The un-priced technical offers shall be categorized as:

(A) acceptable;

(B) potentially acceptable; that is, reasonably susceptible of being made acceptable; or

(C) unacceptable. The Procurement Officer shall record in writing the basis for finding an offer unacceptable and make it part of the procurement file.

The Procurement Officer may initiate Phase Two of the procedure if, in the Procurement Officer's opinion, there are sufficient acceptable un-priced technical offers to assure effective price competition in the second phase without technical discussions. If the Procurement Officer finds that such is not the case, the Procurement Officer shall issue an amendment to the Invitation for Bids or engage in technical discussions as set forth in subsection R-24-103-202b-11(c)(v) of this Rule.

(v) Discussion of Un-priced Technical Offers.

Discussion of its technical offer may be conducted by the Procurement Officer with any bidder who submits an acceptable, or potentially acceptable technical offer. During the course of such discussions, the Procurement Officer shall not disclose any information derived from one un-priced technical offer to any other bidder. Once discussions are begun, any bidder who has not been notified that its offer has been finally found unacceptable, may submit supplemental information amending its technical offer at any time until the closing date established by the Procurement Officer. Such submission may be made at the request of the Procurement Officer or upon the bidder's own initiative.

(vi) Notice of Unacceptable Un-priced Technical Offer. When the Procurement Officer determines a bidder's un-priced technical offer to be unacceptable, such bidder shall not be afforded an additional opportunity to supplement technical offers.

(vii) Mistakes During Multi-Step Sealed Bidding. Mistakes may be corrected or bids may be withdrawn during Phase One:

(A) before un-priced technical offers are considered;

(B) after any discussions have commenced under Rule R-24-103-202b-11(c)(v) (Procedure for Phase One of Multi-Step Sealed Bidding, Discussion of Un-priced Technical Offers); or

(C) when responding to any amendment of the Invitation for Bids. Otherwise mistakes may be corrected or withdrawal permitted in accordance with Rule R-24-103-202b-09 (Mistakes in Bids).

(d) Procedure for Phase Two.

(i) Initiation. Upon the completion of Phase One, the Procurement Officer shall either:

(A) open price bids submitted in Phase One (if price bids were required to be submitted) from bidders whose un-priced technical offers were found to be acceptable; or

(B) if price bids have not been submitted, technical discussions have been held, or amendments to the Invitation for Bids have been issued, invite each acceptable bidder to submit a price bid.

(ii) Conduct. Phase Two shall be conducted as any other competitive sealed bid procurement except:

(A) as specifically set forth in Rule R-24-103-202b-11 (Multi-Step Sealed Bidding)through this Rule;

(B) no public notice need be given of this invitation to submit price bids because such notice was previously given;

(C) after award the un-priced technical offer of the successful bidder shall be disclosed as follows:

The Procurement Officer shall examine written requests of confidentially for trade secrets and proprietary data in the technical offer of said bidder to determine the validity of any such requests. If the parties do not agree as to the disclosure of data, the Procurement Officer shall inform the bidder in writing what portion of the un-priced technical offer will be disclosed and that, unless the bidder protests under Article 109 (Remedies) of the Colorado Procurement Code, the offer will be so disclosed. Such technical offer shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data; and

(D) un-priced technical offers of bidder who are not awarded the contract shall not be open to public inspection unless the Director or head of a purchasing agency determines in writing that public inspection of such offers is necessary to assure confidence in the integrity of the procurement process; provided, however, that the provisions of paragraph (C) above shall apply with respect to the possible disclosure of trade secrets and proprietary data.

R-24-103-202.3 COMPETITIVE SEALED BEST VALUE BIDDING

R-24-103-202.3a COMPETITIVE SEALED BEST VALUE BIDDING (other than construction)

R-24-103-202.3a -01 Definitions

(a) Base bid means the minimum functional requirements set forth in the bid, as issued by the state.

(b) Enhancements means components, services, or products that exceed the minimum functional requirements and would improve the quality of the goods or services being procured by the state.

(c) Options means choices of additional components, services, or products that would serve to provide increased value to the state beyond the base bid.

(d) Alternatives means a choice of a different commodity or service that meets or exceeds the functional requirements of the base bid.

(e) Best value means the lowest overall cost to the state after taking into consideration costs, benefits, and savings.

R-24-103-202.3a-02 Written Determination

When best value bidding selection process is to be used, the State Purchasing Director or head of a purchasing agency shall make a written determination that the use of best value bidding is appropriate for the commodity or service being solicited.

R-24-103-202.3a- 03 Award

When the best value bidding process is used, award shall be made to the responsible offeror whose bid results in the best value to the state. The bid, as awarded, must meet the minimum functional requirements in the base bid.

R-24-103-202.3a-04 Evaluation

Bids shall be evaluated against the minimum functional requirements in the base bid. All bids meeting these specifications shall be determined to be responsive. When a written determination has been made that best value bidding is appropriate for the commodity or service being solicited, the invitation for bids shall expressly allow for enhancements, options, and/or alternatives and shall set forth the objective criteria or formula to be used for evaluation, and the invitation for bid shall require that prices be stated for all options, enhancements, and/or alternatives. The criteria or formula for evaluation must include objective consideration of the costs and savings and/or benefits associated with the enhancements, options, or alternatives. Based on the evaluation of the cost of the base bid, the dollar value of enhancements, options, or alternatives, and the determination of which enhancements, options, or alternatives best meet the needs of the state, an award shall be made to the bidder providing the best value to the state.

R-24-103-202.3b COMPETITIVE SEALED BEST VALUE BIDDING – CONSTRUCTION

R-24-103-202.3b-01 Construction Projects

The use of Competitive Sealed Best Value Bidding shall follow the requirements as used in §24-92-103.5, CRS in construction projects.

R-24-103-202.3b-02 Disclosure

An agency choosing between competitive sealed bidding methods shall disclose the rationale behind its decision in accordance with §24-92-103.7, CRS.

R-24-103-202.3b-03 Evaluation

The criteria for construction projects shall be those in §24-92-103.5(3), CRS.

R 24-103-202.5 Low Tie Bids – Award Procedure and Determination – Bid Preference

(a) The requirements of §24-103-202.5 CRS regarding low tie bids shall be stated in all Invitations for Bids for commodities.

(i) The IFB shall state that any bidder who wishes to be considered a "resident bidder" for purposes of the preference provided in §24-103-202.5 CRS shall include with his/her bid, proof that he/she meets the definition of resident bidder as set forth in either §24-103-101(6)(a) CRS or §24-103-101(6)(b) CRS.

(b) When low tie bids are received in response to an Invitation for Bids for commodities and tie bidders are either both/all resident bidders or both/all non-resident bidders, the State Purchasing Director or the head of a purchasing agency shall follow the procedures set forth in §24-103-202.5 and shall flip a coin or draw straws to determine which bidder receives the award, except when a valid environmentally preferable product preference exists pursuant to §24-103-207.5 CRS. The purchasing preference applies to products and services that have a lesser or reduced adverse effect on human health and the environment than comparable competing products. When the conditions of §24-103-207.5 CRS subsections (3)(a) through (f) have been met, agencies shall award bids for environmentally preferable products or services that cost no more than five percent more than the lowest bid. However, agencies may award the contract to a bidder who offers environmentally preferable products and services which exceed the lowest bid by more than five percent if a cost of ownership life-cycle analysis establishes that long term savings to the state will result. In addition, each purchasing agency must ensure that the purchase can be accommodated within an agency’s existing budget.

(c) Any tie bid for personal services procured through a competitive sealed bid shall be broken by awarding the contract to the bidder utilizing the greatest quantitative (numerical) preference for veterans in hiring offeror's employees.

R-24-103-203 Competitive Sealed Proposals

Except as noted below, the competitive sealed proposal process shall be the same as the competitive sealed bid process.

R-24-103-203-01 Definitions

(a) "Acceptable Proposal" means an offer submitted by any person in response to a Request for Proposals, issued by the State, that is in compliance with the solicitation terms and conditions, and within the requirements of the plans and specifications described and required therein.

(b) "Advantageous" means a judgmental assessment of what is in the State's best interests.

(c) "Practicable" means what may be accomplished or put into practical application; reasonably possible.

(d) "Proposal" means a response, from a vendor, to a Request for Proposals (RFP), also called a response or offer.

(e) "Request for Information (RFI)" is similar to an RFP, but is NOT a source selection method. An RFI is used to obtain preliminary information about a market, type of available service or a product when there is not enough information readily available to write an adequate specification or work statement. An RFI may ask for vendor input to assist the State in preparing a specification or work statement for a subsequent solicitation and may ask for pricing information only with the provision that such information would be submitted voluntarily. The RFI must clearly state that no award will result.

R-24-103-203-02 Written Determinations

(a) The written determinations required by this Rule shall be made by the Director or head of a purchasing agency, or a designee of either.

(b) The Director or head of a purchasing agency may make determinations by category of supply, service, or construction item that it is either not practicable or not advantageous to the State to procure specified types of supplies, services, or construction by competitive sealed bidding. Procurements of the specified types of supplies, services or construction may then be made by competitive sealed proposals based upon such determination. The person who made such determination may modify or revoke it at any time, and such determination should be reviewed for current applicability from time to time.

R-24-103-203-03 When Competitive Sealed Bidding Is "Not Practicable"

Competitive sealed bidding is not practicable unless the nature of the procurement permits award to a low bidder who agrees by his or her bid to perform without condition or reservation in accordance with the purchase description, delivery or performance schedule, and all other terms and conditions of the Invitation for Bids. Factors to be considered in

determining whether competitive sealed bidding is not practicable include, but are not limited to:

(a) whether the contract needs to be other than a fixed-price type;

(b) whether it may be necessary to conduct oral or written discussions with offerors concerning technical and price aspects of their proposals;

(c) whether it may be necessary to afford offerors the opportunity to revise their proposals;

(d) whether it may be necessary to base an award on a comparative evaluation, as stated in the Request for Proposals, of differing price, quality, and contractual factors in order to determine the most advantageous offering to the State. Quality factors include technical and performance capability and the content of the technical proposal; and

(e) whether the primary considerations in determining award may be factors other than price alone.

R-24-103-203-04 When Competitive Sealed Bidding Is "Not Advantageous"

A determination may be made to use competitive sealed proposals if it is determined that it is not advantageous to the State, even though practicable, to use competitive sealed bidding. Competitive sealed bidding may be practicable, that is reasonably possible, but not necessarily advantageous, that is, in the State's best interest. Factors to be considered in determining whether competitive sealed bidding is not advantageous include:

(a) if prior procurements indicate that competitive sealed proposals may result in more beneficial contracts for the State; and

(b) whether the elements listed in the specifications are desirable rather than necessary in conducting a procurement.

R-24-103-203-05 Dollar Thresholds for, and Content of, Requests for Proposals (RFP's)

(a) Requests for Proposals shall be issued (promulgated) by the Division of Purchasing, or agencies with delegated purchasing authority, for requirements that are estimated to exceed the small purchase threshold, utilizing guidelines established by the Division of Purchasing

(b) Form of Proposal. The manner and format in which proposals are to be submitted, including any forms for that purpose, shall be as set forth in the Request for Proposals.

R-24-103-203-06 Vendor Inquiries

In cases where an RFP raises questions or concerns from vendors, or may require interpretation, all known participating vendors must be given an opportunity to ask questions and to receive answers or clarifications. This may be accomplished by use of a pre-proposal conference, via a formal

inquiry period, or a combination of options. If any of these options is anticipated, the RFP shall so state and shall list appropriate dates, times and locations.

Pre-proposal conferences may be mandatory or optional. However, if such meetings result in any material changes to the scope of work or otherwise affect the manner or form of response, all known potential offerors must be notified in writing of any such change.

Similarly, if responses to inquiries result in any material changes to the scope of work or otherwise affect the manner or form of response, all known potential offerors must be notified in writing of any such change.

When such written notice is given, offerors must be afforded a reasonable amount of time to review these materials, to contemplate any consequences and to consider the content for inclusion in their offers.

R-24-103-203-07 Proposal Preparation Time

Proposal preparation time for formal RFPs shall be set to provide offerors a minimum of 30 calendar days to prepare and submit their proposals. However, when special requirements or conditions exist, the State Purchasing Director or head of a purchasing agency may shorten this time, but in no case shall the time be shortened in order to reduce competition. The State Purchasing Director or head of a purchasing agency shall document why the reduced time period was necessary.

R-24-103-203-08 Opening and Recording of Proposals

Proposals shall be opened publicly and a register of proposals shall be prepared which shall include the name of each offeror.

R-24-103-203-09 Evaluation of Proposals

Evaluation Factors in the Request for Proposals. The Request for Proposals shall state all of the evaluation factors, including price. The evaluation shall be based on the evaluation factors set forth in the Request for Proposals. Numerical rating systems may be used. Factors not specified in the Request for Proposals shall not be considered.

(a) Veterans' Preference. The relative weight assigned to a criterion, as to the extent and quality of any preference for veterans of military service given by offeror in the hiring of offeror's employees, shall not exceed 5%.

(b) Minority Business Enterprises

(i) When a competitive sealed proposal process is conducted for commodities or services, and past discrimination against minority businesses can be shown, the RFP shall contain an evaluation criterion, in addition to price and other appropriate criteria, evaluating the extent of MBE participation offered in the proposal. Disparity or predicate studies accepted by other public entities may be used as evidence establishing

past discrimination in the geographical area of the study for the goods or services involved.

(ii) The goal established in each procurement for MBE participation, against which the extent of participation shall be measured, and the weight assigned to the criterion which considers the extent of offeror's MBE participation, shall be determined on a case-by-case basis, but in no event shall the weight assigned to such criterion exceed the lesser of a goal established as a result of the disparity study relied upon as evidence of past discrimination, or the 17% goal established by the Governor's Executive Order D005587.

(iii) In establishing the goal, and the weight of the criterion which considers such goal, consideration shall be given to:

(A) the extent to which subcontracting, or the use of suppliers, is permitted by the RFP or is possible in the response to the RFP; and

(B) the extent to which Minority Business enterprises exist in the particular marketplace and industry to provide the specific goods or services sought by the State in the RFP; and

(C) the extent to which the procuring agency is exceeding, on an annual aggregate basis, the goals of the Executive Order at the time the RFP is prepared.

(c) Women's Business Enterprises.

(i) When a competitive sealed proposal process is conducted for commodities or services, and past discrimination against women's businesses can be shown, the RFP shall contain an evaluation criterion, in addition to price and other appropriate criteria, evaluating the extent of WBE participation offered in the proposal. Disparity or predicate studies accepted by other public entities may be used as evidence establishing past discrimination in the geographical area of the study for the goods or services involved.

(ii) The goal for WBE participation established in each procurement against which the extent of participation shall be measured, and the weight assigned to the criterion that considers the extent of offeror's WBE participation, shall be determined on a case by case basis, but in no event shall such criterion exceed the goal established as a result of the disparity findings relied upon as directed by the Governor's Executive Order D0005-94.

(iii) In establishing the goal, and the weight of the criterion that considers such goal, consideration shall be given to:

(A) the extent to which subcontracting, or the use of suppliers, is permitted by the RFP or is possible in the response to the RFP; and

(B) the extent to which Women's Business Enterprises exist in the particular marketplace and industry to provide the specific goods or services sought by the State in the RFP; and

(C) the extent to which actual WBE participation in the agency's contracts, resulting from RFPs, issued during the current year have exceeded the goals set in those same RFPs, on an aggregate basis.

(d) Tie bids. In all solicitations for personal services, by competitive sealed proposal, any tie between offerors shall be broken by awarding the contract to the offeror utilizing the greatest quantitative (numerical) preference for veterans in hiring offeror's employees.

(e) Classifying Proposals. for the purpose of conducting discussion with offerors, proposals shall be initially classified as:

(i) acceptable;

(ii) potentially acceptable, that is, reasonable susceptible of being made acceptable; or

(iii) unacceptable.

R-24-103-203-10 Proposal Discussion with Individual Offerors after Opening

Purpose of Discussion. Discussions may be held to:

(a) promote understanding of the State's requirements and the offeror's proposals; and

(b) facilitate arriving at a contract that will be most advantageous to the State taking into consideration price and the other evaluation factors set forth in the Request for Proposals.

(c) Conduct and Purpose of Discussion. Offerors shall be accorded fair and equal treatment in discussion and revision of their proposals. After RFP's have been opened, discussions may be held with those offerors determined to be most responsive. Discussions may be held to clarify requirements and to make adjustments in services to be performed and in costs and/or prices. Auction techniques and/or disclosure of any information derived from competing proposals are prohibited. Any changes to the proposal, technical or costs, shall be submitted/confirmed in writing by the contractor(s).

R-24-103-203-11 Award

Awards shall be made to the responsible offeror whose proposal is determined to be most advantageous to the State based on the evaluation factors set forth in the Request for Proposals. The evaluation committee established to evaluate offers shall make such determination subject to final approval by the head of a purchasing agency or delegate.

R-24-103-204 Small Purchases

Small purchases are goods and services purchases costing less than $150,000 and construction projects costing less than $150,000. Small purchases may be procured in accordance with the dollar limits established

by this rule. Procurements shall not be artificially divided so as to constitute small purchases under this Rule. Small purchases are subject to the requirement that prices paid be fair and reasonable. (§24-30-202(2) CRS)

R-24-103-204-01 Purchase Orders

The use of Purchase Orders is governed by the State Fiscal Rules.

R-24-103-204-02 Competition Not Required

(a) Non-delegated Agencies. Agencies that have not been delegated purchasing authority may purchase supplies or services up to a limit of $5,000 without benefit of competition. Items on a mandatory price agreement issued by the Division of Purchasing must be secured from the appropriate vendor.

(b) Group I and Group II Agencies. Group I and Group II agencies may secure supplies up to a limit of $10,000 and services up to $25,000 without benefit of competition. Items on a mandatory price agreement issued by the Division of Purchasing must be secured from the appropriate vendor.

(c) All agencies shall maximize the opportunity for minority-owned and women-owned business enterprises to receive orders that are issued when bids are not required.

(d) The person doing the acquisition shall use professional judgment to ensure that the State is receiving maximum value. This rule does not preclude the option to place the solicitation on an Electronic Procurement System.

(e) All agencies may procure construction up to $25,000 without benefit of competition.

If abuses to this rule are discovered, the Director or head of a purchasing agency may revoke the purchasing authority.

R 24-103-204-03 Documented Quotes

(a) Goods costing between $10,000 and $150,000, services not defined in §24-30-1402 CRS costing between $25,000 and $150,000 and construction projects between $25,000 and $150,000 may be purchased using a documented quote process.

(b) For goods and services procurements, neither the solicitation nor the vendor’s response constitutes an offer; therefore, responsiveness at the time of receipt is not an absolute criterion. The purchasing authority may determine whether or not a response is acceptable and may compare the relative value of competing responses, not solely the price. "Acceptable," for purposes of this paragraph and paragraphs (d) and (f) below, means that the product or service will meet the state’s needs and that the price is fair and reasonable. The purchase order/commitment voucher constitutes an offer. The vendor may accept by performance, unless the purchase

order/commitment voucher expressly requires acceptance by written acknowledgment.

(c) For construction projects, the contractor’s response constitutes an offer and is binding if accepted by the state.

(d) The choice of vendor for goods and services must be based on which acceptable response is most advantageous to the state, price/cost being the primary consideration. The basis for the selection must be documented and will be final and conclusive unless determined to be arbitrary, capricious, or contrary to law. For construction projects, the award must be made to the low acceptable quote, except when the award is for products only that are for inclusion in construction projects and the products are specifically identified and a valid environmentally preferable product preference exists pursuant to §24-103-207.5 CRS. The provisions of §24-103-207.5 CRS which require a preference for environmentally preferable products apply to the award of contracts under this section. The purchasing preference applies to products and services that have a lesser or reduced adverse effect on human health and the environment than comparable competing products. When the conditions of §24-103-207.5 CRS subsections (3)(a) through (f) have been met, agencies shall award bids for environmentally preferable products or services that cost no more than five percent more than the lowest bid. However, agencies may award the contract to a bidder who offers environmentally preferable products and services which exceed the lowest bid by more than five percent if a cost of ownership life-cycle analysis establishes that long term savings to the state will result. In addition, each purchasing agency must ensure that the purchase can be accommodated within an agency’s existing budget.

(e) Requests for documented quotes must be placed on an Electronic Procurement System in accordance with Rules R24-102-202.5-02 and -04. Solicitations must remain posted for at least three working days unless the director or head of a purchasing agency determines in writing that a lesser time is required in order to meet an immediate state need.

(f) The purchasing official may negotiate with any vendor or contractor to clarify its quote or to effect modifications that will: make the quote acceptable (including curing a defective bid bond) or make the quote more advantageous to the state. However, in the negotiation process, the terms of one vendor’s quote shall not be revealed to a competing vendor, and quotes may be kept confidential until a commitment voucher is issued.

(g) Procurement of services greater than $10,000 must be reviewed by the delegated purchasing official for a determination that prices or rates are fair and reasonable.

(h) Agencies, with the approval of the Office of the State Architect, may utilize a Standing Order Process for projects less than $150,000. An approved process must include open public solicitation (including advertising on an Electronic Procurement System) for eligible contractors at least once per year, a process for obtaining at least three quotes before awarding a contract to an eligible contractor, and an equitable process for determining which contractors will be given an opportunity to provide quotes.

(i) Bonding and retainage requirements set forth in §38-26-106 CRS, §24-105-201 et seq. CRS, and §24-91-103(1) CRS and rules promulgated thereunder are not affected by this Rule. Failure to provide a bid bond if required but not cured makes the quote unacceptable. Agencies should seek legal advice when bid bonds have been required and the terms of the quote are modified after receipt.

R-24-103-205-01 Sole Source Procurements

(a) Conditions for Use. A sole source procurement is justified when there is only one good or service that can reasonably meet the need and there is only one vendor who can provide the good or service. A requirement for a particular proprietary item (i.e., a brand name specification) does not justify a sole source procurement if there is more than one potential bidder or offeror for that item. The following are examples of circumstances which could justify a sole source procurement:

(i) where the compatibility of equipment, accessories, or replacement parts is the paramount consideration;

(ii) where a sole supplier's item is needed for trial use or testing;

(iii) where public utility services are to be procured.

The Director, the head of a purchasing agency, or the designee of such person, shall make a written determination that a procurement is sole source, setting forth the reasons. In cases of reasonable doubt, competition should be solicited. Any request by a using agency that a procurement be restricted to one potential contractor shall be accompanied by an explanation as to why no other will be suitable or acceptable to meet the need.

(b) Exemptions. Sole source determinations are not required under circumstances outlined in §24-101-105, CRS, as amended, and related rules.

R-24-103-205-02 Negotiation

When a sole source procurement is authorized, the Procurement Officer shall conduct negotiations, as appropriate, as to price, delivery, and terms.

R-24-103-206 Emergency Procurements

R-24-103-206-01 Definition of Emergency Conditions

An emergency condition is a situation which creates a threat to public health, welfare, or safety such as may arise by reason of floods, epidemics, riots, equipment failures, or such other reason as may be proclaimed by the using agency and approved by the director, head of a purchasing agency, or designee. In the event that emergency controlled maintenance funding is to be requested, the Office of the State Architect shall also be notified by the next working day. The existence of such condition creates an immediate and serious need for supplies, services, or

construction that cannot be met through normal procurement methods and the lack of which would seriously threaten:

(a) the functioning of state government, or its programs;

(b) the preservation or protection of property; or

(c) the health or safety of any person or persons.

R-24-103-206-02 Scope of Emergency Procurements.

Emergency procurements shall be limited only to a quantity of those supplies, services, or construction items necessary to meet the emergency.

R-24-103-206-03 Authority to Make Emergency Procurements.

Any state agency may make emergency procurements when an emergency condition arises and the need cannot be met through normal procurement methods, provided that whenever practical, approval by the Director, or head of a purchasing agency, shall be obtained prior to the procurement. In the event an emergency arises after normal working hours, the state agency shall notify the Director, or head of a purchasing agency, on the next working day. In the event that emergency controlled maintenance funding is to be requested, the Office of the State Architect shall also be notified by the next working day.

R-24-103-206-04 Source Selection Methods

(a) General. The procedure used shall be selected to assure that the required supplies, services, or construction items are procured in time to meet the emergency. Given this constraint, such competition as is practicable shall be obtained.

(b) Determination Required. The Procurement Officer or the agency official responsible for procurement shall make a written determination stating the basis for an emergency procurement and for the selection of the particular contractor. Such determination shall be sent promptly to the director.

R-24-103-208-01 Competitive Reverse Auctions

Contracts for goods and services may be awarded by competitive reverse auctions if the director or head of a purchasing agency determines that adequate competition can be achieved and that the process is likely to result in better pricing.

Competitive reverse auction means a bidding process through which a pre-established group of vendors may post bids for a defined period of time and may change their bids as desired during the bidding period.

(a) The intent to conduct a competitive reverse auction shall be published on an Electronic Procurement System for a period of not less than 14 days. An Electronic Procurement System notice shall include all terms, conditions, and specifications and shall tell interested vendors how to participate in the process. If the director or head of a purchasing agency

believes that an Electronic Procurement System is not likely to yield adequate competition, the agency may notify potential vendors through additional methods.

(b) All responsible vendors willing to accept the terms and conditions of the procurement and to meet the specifications of the bid shall be eligible to participate. The purchasing agency may conduct a preliminary process to determine vendor responsibility and to ensure the vendor's responsiveness to terms and specifications.

(c) During the bidding process, the participating vendors shall be identified only by a letter, number, or other symbol to protect their identities; each bid price and the letter, number, or symbol designation of the vendor shall be made available for all bidding vendors immediately upon receipt.

(d) The contract shall be awarded to the low responsible bidder whose bid meets the requirements and specifications.

R-24-103-208-02 Competitive Negotiation

Contracts may be awarded by competitive negotiation.

(a) If the director or head of a purchasing agency determines that time does not permit resolicitation, a contract may be awarded by competitive negotiation after an unsuccessful competitive sealed bid or competitive sealed proposal process.

(b) A competitive sealed bid or competitive sealed proposal process is unsuccessful if (1) all offers received are unreasonable or uncompetitive, (2) the low bid exceeds available funds, as certified in writing by the appropriate fiscal officer, (3) the solicitation has been properly cancelled in accordance with the provisions of §24-103-301 CRS or §24-109-401 and –402 CRS, or (4) the number of responsive offers is not adequate to ensure adequate price competition.

(c) The competitive negotiation process shall include all vendors who responded to the solicitation or any rebid and may include other vendors capable of fulfilling the state's needs.

(d) The purchasing agency may set reasonable times and locations for participation in the competitive negotiation, reflecting the fact that time constraints are the basis for the competitive negotiation process.

(e) Each vendor with whom the purchasing agency negotiates shall be given a fair and equal chance to compete. Negotiations shall be conducted separately and independently with each vendor, and in no case shall the terms of any vendor's offer be communicated to any other vendor until an intent to award notice has been issued. Any change in requirements shall be communicated to all vendors.

(f) A vendor may be eliminated from the process upon a determination that its offer is not reasonably susceptible of being selected for award.

(g) The award shall be made to the vendor whose offer is most advantageous to the state. The director or head of a purchasing agency shall make a written determination that identifies the nature of the discussions with each vendor and that states why the selected offer is the most advantageous to the state.

PART 3 CANCELLATION OF SOLICITATIONS: REJECTION OF BIDS OR PROPOSALS

R-24-103-301 Cancellation of Invitations for Bids or Requests for Proposals

R-24-103-301-01 Scope of This Rule

The provisions of this rule shall govern the cancellation of any solicitations whether issued by the state under competitive sealed bidding, competitive sealed proposals, small purchases, or any other source selection method, and rejection of bids or proposals in whole or in part, whether rejected for being non-responsive or non-responsible.

R-24-103-301-02 Policy

Solicitations should only be issued when there is a valid procurement need. Solicitations should not be issued to obtain estimates or to "test the water." A solicitation is to be cancelled only when there are cogent and compelling reasons to believe that the cancellation of the solicitation is in the state's best interest.

R-24-103-301-03 Cancellation of Solicitation; Notice

Each solicitation issued by the State shall contain language stating that the solicitations may be cancelled as provided in this rule.

R-24-103-301-04 Cancellation of Solicitation: Rejection of all Bids or Proposals

(a) Prior to Opening. Prior to opening of bids, a solicitation may be cancelled in whole or in part when the Director, or the head of a purchasing agency, determines in writing that such action is in the state's best interest for reasons including but not limited to:

(i) the state no longer requires the supplies, services, or construction.

(ii) the state no longer can reasonably expect to fund the procurement; or

(iii) proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable.

(b) Notice. When a solicitation is cancelled prior to opening, notice of cancellation shall be sent to all businesses solicited. The notice of cancellation shall:

(i) identify the solicitation;

(ii) explain the reason for cancellation; and

(iii) where appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future procurements of similar supplies, services, or construction.

(c) After Opening. After opening but prior to award, any or all bids or proposals may be rejected in whole or in part when the Director or the head of a purchasing agency, determines in writing that such action is in the state's best interest for reasons including but not limited to:

(i) the supplies, services, or construction being procured are no longer required;

(ii) ambiguous or otherwise inadequate specifications were part of the solicitation;

(iii) the solicitation did not provide for consideration of all factors of significance to the state;

(iv) prices exceed available funds and it would not be appropriate to adjust quantities or qualities to come within available funds;

(v) all otherwise acceptable bids or proposals received are at clearly unreasonable prices; or

(vi) there is reason to believe that the bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith.

A notice of rejection should be sent to all businesses that submitted bids or proposals.

(d) Documentation. The reasons for cancellation or rejection shall be made a part of the procurement file and shall be available for public inspection.

(e) Disposition of Bids or Proposals. When bids or proposals are rejected, or a solicitation cancelled after bids or proposals are received, the bids or proposals which have been opened shall be retained in the procurement file, or if unopened, returned to the bidders or offerors upon request, or otherwise disposed of.

PART 4 QUALIFICATIONS AND DUTIES

R-24-103-401 Responsibility of Bidders and Offerors

R-24-103-401-01 Application

A determination of responsibility or non-responsibility shall be governed by this Rule.

R-24-103-401-02 Standards of Responsibility

(a) Standards. Factors to be considered in determining whether the standard of responsibility has been met include whether a prospective contractor or vendor has:

(i) available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them necessary to indicate the capability to meet all contractual requirements;

(ii) a satisfactory record of performance;

(iii) a satisfactory record of integrity;

(iv) qualified legally to contract with the State; and

(v) supplied all necessary information in connection with the inquiry concerning responsibility.

(b) Information Pertaining to Responsibility. The prospective contractor shall supply information requested by the Procurement Officer concerning the responsibility of such contractor. If such contractor fails to supply the requested information, the Procurement Officer shall base the determination of responsibility upon any available information or may find the prospective contractor non-responsible if such failure is unreasonable.

R-24-103-401-03 Ability to Meet Standards

The prospective contractor or vendor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:

(a) evidence that such contractor possesses such necessary items;

(b) acceptable plans to subcontract for such necessary items; or

(c) a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

R-24-103-401-04 Written Determination of Non-responsibility Required

If a bidder or offeror who otherwise would have been awarded a contract is found non-responsible, a written determination of non-responsibility setting forth the basis of the finding shall be prepared by the Director or head of a purchasing agency. A copy of the determination shall be sent promptly to the non-responsible bidder or offeror. The final determination shall be made part of the procurement file.

R-24-103-402 Prequalification of Suppliers

R-24-103-402-01 Requirements

(a) The Director, or head of a purchasing agency, may develop pre-qualification procedures for specific solicitations.

(b) Colorado Labor shall be employed on a Public Works Project unless a waiver is allowed pursuant to §8-17-101, CRS.

R-24-103-403 Cost or Pricing Data

R-24-103-403-01 Definitions

(a) Cost Data is factual information concerning the cost of labor, material, overhead, and other cost elements which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.

(b) Price Data is factual information concerning prices for supplies, services, or construction substantially identical to those being procured. Prices in this definition refer to offered or proposed selling prices, historical selling prices, and current selling prices of such items. The definition refers to data relevant to both prime and subcontract prices.

R-24-103-403-02 Requirement for Cost or Pricing Data

Cost or pricing data is required to be submitted in support of a proposal when:

(a) adjusting the price of any contract, including a contract awarded by competitive sealed bidding, whether or not cost or pricing data were required in connection with the initial pricing of the contract, if the adjustment involves aggregate increases and/or decreases in costs plus applicable profits expected to exceed $500. However, this requirement shall not apply when unrelated and separately priced adjustments for which cost or pricing data would not be required if considered separately are consolidated for administrative convenience;

(b) an emergency procurement is made in excess of $25,000, but such data may be submitted after contract award; or

(c) the procurement officer makes a written determination that the circumstances warrant requiring submission of cost or pricing data provided, however, cost or pricing data shall not be required where the contract award is made pursuant to competitive sealed bidding.

R-24-103-403-03 Submission of Cost or Pricing Data and Certification

(a) Time and Manner. When cost or pricing data are required, they shall be submitted to the procurement officer prior to beginning price negotiations at any reasonable time and in any reasonable manner prescribed by the procurement officer. When the procurement officer requires the offeror or contractor to submit cost or pricing data in support of any proposal, such data shall be either actually submitted or specifically identified in writing.

(b) Obligation to Keep Data Current. The offeror or contractor is required to keep such submission current until the negotiations are concluded.

(c) Time for Certification. The offeror or contractor shall certify as soon as practicable after agreement is reached on price that the cost or pricing data submitted are accurate, complete, and current as of a mutually determined date prior to reaching agreement.

(d) Refusal to Submit Data. A refusal by the offeror to supply the required data shall be referred to the Director or the head of a purchasing agency, whose duty shall be to determine, in writing, whether to disqualify the non-complying offeror, to defer award pending further investigation, or to enter into the contract. A refusal by a contractor to submit the required data to support a price adjustment shall be referred to the Director or the head of a purchasing agency who shall determine, in writing, whether to further investigate the price adjustment, not to allow any price adjustment, or to set the amount of the adjustment, subject to the contractor's rights under Article 109 (Remedies) of the Colorado Procurement Code.

(e) Exceptions. Cost and pricing data need not be submitted and certified:

(i) where the contract price is based on:

(A) adequate price competition;

(B) established catalogue prices or market prices;

(ii) when the Director or the head of a purchasing agency determines in writing to waive the applicable requirement for submission of cost or pricing data under the Sub-section R-24-103-403-02(a) or (b) of this Rule in a particular pricing action and the reasons for such waiver are stated in the determination. A copy of such determination shall be kept in the contract file and made available to the public upon request.

If, after cost or pricing data were initially requested and received, it is determined that adequate price competition does exist, the data need not be certified.

R-24-103-403-04 Meaning of Terms "Adequate Price Competition," "Established Catalogue Prices or Market Prices," and "Prices Set by Law or Regulation"

(a) Application. As used in the exceptions set forth in Rule R-24-103-403-03(e) (Cost or Price Data, Exceptions) the terms "adequate price competition," "established catalogue prices or market prices," and "prices set by law or regulations" shall be construed in accordance with the following definitions.

(b) Adequate Price Competition. Price competition exists if competitive sealed proposals are solicited and at least two responsible offerors independently compete for a contract to be awarded to the responsible offeror submitting the lowest evaluated price by submitting priced offers (or best and final offers) meeting the requirements of the solicitation. If the foregoing conditions are met, price competition shall be presumed to be "adequate" unless the procurement officer determines in writing that such competition is not adequate.

(c) Established Catalogue Prices or Market Prices.

(i) See Article 103, Part 1 (Definitions, Established Catalogue Price) of the Colorado Procurement Code for the definition of established catalogue price.

(ii) "Established Market Price" means a current price, established in the usual and ordinary course of trade between buyers and sellers, which can be substantiated from sources which are independent of the manufacturer or supplier and may be an indication of the reasonableness of price.

(iii) If, despite the existence of an established catalogue price or market price, and after consultation with the prospective contractors, the procurement officer considers that such price is not reasonable, cost or pricing data may be requested. Where the reasonableness of the price can be assured by a request for cost or pricing data limited to data pertaining to the differences in the item or services being procured and those in the catalogue or market, requests should be so limited.

(d) Prices Set by Law or Regulation. The price of a supply or service is set by law or regulation if some governmental body establishes the price that the offeror or contractor may charge the State and other customers.

R-24-103-403-05 Defective Cost or Pricing Data

(a) Overstated Cost or Pricing Data. If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or non-current as of the date stated in the certificate, the State is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee was increased because of the defective data. Judgmental errors made in good faith concerning the estimated portions of future costs or projections do not constitute defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data were not used or relied upon, the price should be reduced in such amount. In establishing that the defective data caused an increase in the contract price, the procurement officer is not expected to reconstruct the negotiation by speculating as to what would have been the mental attitudes of the negotiating parties if the correct data had been submitted at the time of agreement on price.

(b) Offsetting Understated Cost or Pricing Data. In determining the amount of a downward adjustment, the contractor shall be entitled to an offsetting adjustment for any understated cost or pricing data submitted in support of price negotiations for the same pricing action up to the amount of the State's claim for overstated cost or pricing data arising out of the same pricing action.

(c) Dispute as to Amount. If the contractor and the procurement officer cannot agree as to the amount of adjustment due to defective cost or pricing data, the procurement officer shall set an amount in accordance with Sub-sections (a) and (b) of this Section and the contractor may

appeal this decision under Article 109 (Remedies) of the State of Colorado Procurement Code.

PART 5 TYPES OF CONTRACTS

R-24-103-501 Types of Contracts

(See Statute)

The minimum requirements for contract formation and content are contained in Chapter 3 of the Colorado Fiscal Rules.

R-24-103-502 Approval of Accounting System

(See Statute)

R-24-103-503 Multi-Year Contracts

The Division of Purchasing or agencies with delegated purchasing authority may enter into multi-year contracts for supplies or services subject to funding availability. Contracts for periods in excess of five years shall not be executed without written permission of the State Purchasing Director.

Specifications for multi-year contracts shall contain conditions of renewal or extension, if any. Methods used to determine any price escalation/de-escalation shall be part of the original specifications and made a part of the contract. Contracts shall only be renewed or extended if funds are available for the new contract period.

PART 6 AUDIT OF RECORDS

(See Statute)

PART 7 DETERMINATIONS AND REPORTS

(See Statutes)

ARTICLE 104 SPECIFICATIONS

PART 1 DEFINITIONS

R-24-104-101 Definitions

R-24-104-101-01 Terms Defined in this Article

(a) Brand Name Specification: Means a specification limited to one or more items by manufacturer's names or catalogue numbers.

(b) Brand Name or Equal Specification: Means a specification which uses one or more manufacturer's names or catalogue numbers to describe the standard of quality, performance, and other characteristics needed to meet state requirements, and which provides for the submission of equivalent products.

(c) Qualified Products List: Means an approved list of supplies, services or construction items described by model or catalogue numbers, which prior to competitive solicitation, the state has determined will meet the applicable specification requirements.

(d) Specifications: See Statute; includes performance characteristics.

PART 2 SPECIFICATIONS

R-24-104-201 Duties of the Executive Director

R-24-104-201-01 General Purpose and Policies

(a) Purpose. The purpose of a specification is to serve as a basis for obtaining a supply, service, or construction item adequate and suitable for the State's needs in a cost effective manner, taking into account, to the extent practicable, the costs of ownership and operation as well as initial acquisition costs, i.e., value analysis. It is the policy of the State that specifications permit maximum practicable competition consistent with this purpose. Specifications shall be drafted with the objective of clearly describing the State's requirements.

(b) Use of Functional or Performance Descriptions. Specifications shall, to the extent practicable, emphasize functional or performance criteria while limiting design or other detailed physical descriptions to those necessary to meet the needs of the State. To facilitate the use of such criteria, using agencies shall endeavor to include as part of their purchase requisitions the principal functional or performance needs to be met. It is recognized, however, that the preference for use of functional or performance specifications is primarily applicable to the procurement of supplies and services. Such preference is often not practicable in construction, apart from the procurement of supply type items for a construction project.

(c) Preference for Commercially Available Products. It is the general policy of this State to procure standard commercial products whenever practicable. In developing specifications, accepted commercial standards shall be used and unique requirements shall be avoided, to the extent practicable.

R-24-104-202 Brand Name or Equal Specification: Conditions for Use

Brand name or equal specifications may be used when it is in the best interest of the State and when the item to be procured is best described by use of such a specification. Brand name or equal specifications shall seek to designate three or as many different brands as are practicable as "or equal" references and shall further state that substantially equivalent products to those designated will be considered for award. Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not to limit or restrict competition.

R-24-104-202-01 Brand Name Specifications: Conditions for Use

Since use of a brand name specification is restrictive, it may be used when only the brand name or items will satisfy the State's needs. The procurement officer shall seek to identify sources from which the designated brand name or item can be obtained and shall solicit such sources to achieve whatever degree of competition is practicable. If only one source can supply the requirement, the procurement shall be made under Rule R-24-103-205 (Sole Source Procurement).

R-24-104-202-02 Qualified Products List: Conditions for Use

A qualified products list may be developed with the approval of the Director or the head of a purchasing agency when testing or examination of the supplies or construction items prior to issuance of the solicitation is desirable or necessary in order to best satisfy the State's requirements. When developing a qualified products list, a representative group of potential suppliers may be solicited in writing to submit products for testing and examination to determine acceptability for inclusion on a qualified products list. Any potential supplier, even though not solicited, may offer its products for consideration on subsequent solicitations.

R-24-104-203 Exempted Items

(See Statute)

R-24-104-204 Relationship With Using Agencies

(See Statute)

R-24-104-205 Maximum Practicable Competition

(See Statute)

R-24-104-206 Ownership Considerations

(See Statute)

ARTICLE 105 CONSTRUCTION CONTRACTS

PART 1 MANAGEMENT OF CONSTRUCTION CONTRACTING

R-24-105-101 Responsibility for Selection of Methods of Construction Contracting Management

R-24-105-101-01 Definitions

(a) Prime Contractor, as used in this article means a person who has a contract with the state to build, alter, repair, improve, or demolish any public structure or building, or other public improvements of any kind to any public real property.

R-24-105-101-02 General Definitions

(a) Use of Definitions. The following definitions are to provide a common vocabulary for use in the context of this Rule and for general discussion concerning the construction contracting activities of the state. The methods described are not all mutually exclusive and often may be combined on one project. These definitions are not intended to be fixed in respect to all construction projects of the state. In each project these definitions may be adapted to fit the circumstances of that project. However, the procurement officer should endeavor to ensure that these terms are defined adequately in the appropriate contracts, are not used in a misleading manner, and are understood by all relevant parties. Significant deviations from the definitions provided in this Rule should be explicitly noted.

(b) Single Prime Contractor. The single prime contractor method of contracting is typified by one business (general contractor) contracting with the state to timely complete an entire construction project in accordance with plans and specifications provided by the state. Often these plans and specifications are prepared by a private architectural firm under contract to the state. Further, while the general contractor may take responsibility for successful completion of the project, much of the work may be performed by specialty contractors with whom the prime contractor has entered into subcontracts.

(c) Design-Build or Turnkey. In design-build or turnkey project, a business contracts directly with the state to meet the state's requirements as described in a set of performance specifications by constructing a facility to its own plans and specifications. Design responsibility and construction responsibility both rest with the design-build contractor. This method can include instances where the design-build contractor supplies the site as part of the package.

(d) Construction Manager/General Contractor. Construction management is a team approach to construction. A construction manager/general contractor is a firm or individual experienced in construction that has the ability to evaluate and to implement plans and specifications as they affect time, cost, and quality of construction and the ability to coordinate the design (consisting of architect/engineers and other consultants as may be required as team members) and contracts directly with sub-contractors for performance of the construction of the project, including the administration of change orders.

(e) Phased Design and Construction. Phased design and construction denotes a method in which construction is begun when appropriate portions have been designed, but before substantial design of the entire structure has been completed. This method is also known as fast-track construction.

The above defined methods of construction contracting are not to be construed as an exclusive list. In selecting the appropriate construction contracting method, consideration will be given to all appropriate and

effective methods and their comparative advantages and disadvantages and how they might be adapted or combined to fulfill state requirements.

PART 2 BONDS

R-24-105-201 Bid Security

R-24-105-201-01 General

(See Statute)

R-24-105-201-02 Acceptable Bid Security.

Acceptable bid security shall be limited to:

(a) a one-time bid bond underwritten by a company licensed to issue bid bonds in the State of Colorado, and in the form prescribed in Section 24-105-203 CRS and Rule R-24-105-203; or

(b) a bank cashier's check made payable to the Treasurer of the State of Colorado; or

(c) a bank certified check made payable to the Treasurer of the State of Colorado.

The bid security is submitted as a guarantee that the bid will be maintained in full force and effect for a period of thirty (30) days after the opening of the bids or as specified in the Invitation for Bids.

R-24-105-202 Contract Performance and Payment Bonds

R-24-105-202-01 Performance Bonds

(See Statute)

R-24-105-202-02 Payment Bonds

(See Statute)

R-24-105-202-03 Exceptions

If it is deemed to be in the State's best interest, the procurement officer may require, as provided in §24-105-202(2) CRS, a performance bond or other security in addition to those bonds or in circumstances other than those specified in §24-105-202(a), (b) CRS, as amended.

R-24-105-203 Bond Forms and Copies

R-24-105-203-01 Forms

All construction contracts and procedural documents shall be executed on standard State of Colorado forms available on-line on the Office of the State Architect website.

PART 3 CONSTRUCTION CONTRACT CLAUSES AND FISCAL RESPONSIBILITY

R-24-105-301 Contract Clauses and Their Administration

(See Statute)

R-24-105-302 Fiscal Responsibility

(See Statute)

ARTICLE 106 MODIFICATION AND TERMINATION OF CONTRACTS (FOR OTHER THAN CONSTRUCTION)

R-24-106-101 Contract Clauses - Price Adjustments - Additional Clauses - Modification

(See Statute)

R-24-106-101-01 Revisions to Contract Clauses

These clauses may be varied for use in a particular contract at the discretion of the procurement officer.

R-24-106-102-02 Changes Clause

(a) Changes Clause in Fixed-Price Contracts. In fixed-price contracts, the following clause may be inserted:

(i) Change Order. By a written order, at any time, and without notice to any surety, the procurement officer may, subject to all appropriate adjustments, make changes within the general scope of this contract in any one or more of the following:

(A) drawings, designs, or specifications, if the supplies to be furnished are to be specially manufactured for the purchasing agency in accordance therewith;

(B) method of shipment or packing; or

(C) place of delivery.

(ii) Adjustments of Price or Time or Performance. If any such change order increases or decreases, the contractor's cost of, or the time required for, performance of any part of the work under this contract, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this Contract.

Failure of the parties to agree to an adjustment shall not excuse the contractor from proceeding with the contract as changed, provided that the purchasing agency promptly and duly makes such provisional adjustments in payment or time for performance as may be reasonable. By proceeding with

the work, the contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of the time for completion.

(iii) Time Period for Claim. Within 30 days after receipt of a written change order under the Change Order paragraph of this clause, unless such period is extended by the procurement officer in writing, the contractor shall file notice of intent to assert a claim for an adjustment.

(iv) Claim Barred After Final Payment. No claim by the contractor for an adjustment hereunder shall be allowed if asserted after final payment under this contract.

R-24-106-101-03 Stop Work Order Clause

(a) Use of Clause. This clause is authorized for use in any fixed-price contract under which work stoppage may be required for reasons such as advancements in the state of the art, production modification, engineering changes or realignment of programs.

(b) Use of Orders

(i) Because stop work orders may result in increased costs by reason of standby costs, such orders will be issued only with prior approval of the procurement officer.

(ii) Stop work orders shall include, as appropriate:

(A) a clear description of work to be suspended;

(B) instructions as to the issuance of further orders by the contractor for material or services.

(iii) If an extension of the stop work order is necessary, it must be evidenced by a supplemental agreement as soon as feasible after a stop work order is issued. Any cancellation of a stop work order shall be subject to the same approvals as were required for the issuance of the order.

(c) Clause

(i) Order to Stop Work. The procurement officer may, by written order to the contractor, at any time, and without notice to any surety, require the contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period after the order is delivered to the contractor. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, the contractor shall forthwith comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or as legally extended, the procurement officer shall either:

(A) cancel the stop work order; or

(B) terminate the work covered by such order; or

(C) terminate the contract.

(ii) Cancellation or Expiration of the Order. If a stop work order issued under this clause is properly cancelled, the contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the contract shall be modified in writing accordingly, if:

(A) the stop work order results in an increase in the time required for, or in the contractor's cost properly allocable to, the performance of any part of this contract; and

(B) the contractor asserts claim for such an adjustment within 30 days after the end of the period of work stoppage.

(iii) Termination of Stopped Work. If the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise and such adjustment shall be in accordance with the Price Adjustment Clause of this contract.

R-24-106-101-04 Variations in Estimated Quantities Clause

(a) Define Quantity Contracts. The following clause may be used in definite quantity supply or service contracts:

"Upon the agreement of the parties, the quantity of supplies or services, or both, specified in this contract may be increased provided:

(i) the unit prices for the increased quantity increment will remain the same; and

(ii) such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract."

(b) Indefinite Quantity Contracts. No clause is provided here. However, the solicitation and contract should include:

(i) the minimum quantity, if any, the purchasing agency is obligated to order and the contractor to provide;

(ii) whether there is an approximate quantity the purchasing agency expects to order and how this quantity relates to the minimum and maximum quantities that may be ordered under the contract;

(iii) whether there is a maximum quantity the purchasing agency may order and the contractor must provide; and

(iv) whether the purchasing agency is obligated to order its actual requirements under the contract, with exception for a stated quantity, which if exceeded, separate bids may be solicited.

R-24-106-101-05 Price Adjustment Clause

The following clause may be used when price adjustments are anticipated:

(a) Price Adjustment Method. Any adjustment in contract price pursuant to the application of a clause in this contract shall be made in one or more of the following ways:

(i) by agreement on a fixed-price adjustment;

(ii) by unit prices specified in the contract;

(iii) in such other manner as the parties may mutually agree; or

(iv) in the absence of agreement between the parties, by a unilateral determination by the procurement officer of the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee.

(b) Submission of Cost or Pricing Data. The contractor shall provide cost or pricing data for any price adjustment subject to the provisions of the Cost or Pricing Data section of the Colorado State Procurement Rules.

R-24-106-101-06 Termination for Default Clause

(a) Default. If the contractor refuses or fails to timely perform any of the provisions of this contract, with such diligence as will ensure its completion within the time specified in this contract, the procurement officer may notify the contractor in writing of the non-performance, and if not promptly corrected, such officer may terminate the contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. The contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services elsewhere.

(b) Contractor's Duties. Notwithstanding termination of the contract and subject to any directions from the procurement officer, the contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the contractor in which the purchasing agency has an interest.

(c) Compensation. Payment for completed supplies delivered and accepted by the purchasing agency shall be at the contract price. The purchasing agency may withhold amounts due to the contractor as the procurement officer deems to be necessary to protect the purchasing agency against loss because of outstanding liens or claims of former lien holders and to reimburse the purchasing agency for the excess costs incurred in procuring similar goods and services.

(d) Excuse for Nonperformance or Delayed Performance. The contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms if such failure arises out of acts of God; acts of the public enemy; acts of the state and any governmental entity

in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather.

Upon request of the contractor, the procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the purchasing agency.

(e) Erroneous Termination for Default. If after notice of termination of the contractor's right to proceed under the provisions of this clause, it is determined for any reason that the contractor was not in default under the provisions of this clause, or that the delay was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the termination for convenience clause.

R-24-106-101-07 Liquidated Damages Clause

The State may insert the following clause in construction contracts:

"When the contractor is given notice of delay or nonperformance and fails to cure in the time specified, in addition to any other damages that are applicable, the contractor shall be liable for a $_____ (amount to be filled in for each contract) per calendar day from date set for cure until either the purchasing agency reasonably obtains similar supplies or services if the contractor is terminated for default, or until the contractor provides the supplies or services if the contractor is not terminated for default. To the extent that the contractor's delay or nonperformance is excused under the Excuse for Nonperformance or Delayed Performance paragraph of the Termination for Default Clause of this contract, liquidated damages shall not be due the purchasing agency."

R-24-106-101-08 Termination for Convenience Clause

(a) Termination. The procurement officer may, when the interests of the purchasing agency so require, terminate this contract in whole or in part, for the convenience of the agency. The procurement officer shall give written notice of the termination to the contractor specifying the part of the contract terminated and when termination becomes effective. This in no way implies that the purchasing agency has breached the contract by exercise of the Termination for Convenience Clause.

(b) Contractor's Obligations. The contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the contractor will stop work to the extent specified. The contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The procurement officer may direct the contractor to assign the contractor's

right, title, and interest under terminated orders or subcontracts to the purchasing agency. The contractor must still complete and deliver to the purchasing agency the work not terminated by the Notice of Termination and may incur obligations as are necessary to do so.

(c) Compensation.

(i) The contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data bearing on such claim. If the contractor fails to file a termination claim within 90 days from the effective date of termination, the procurement officer may pay the contractor, if at all, an amount set in accordance with subparagraph (c) (iii) in this paragraph.

(ii) The procurement officer and the contractor may agree to a settlement provided the contractor has filed a termination claim supported by cost or pricing data and that the settlement does not exceed the total contract price plus settlement costs, reduced by payments previously made by the purchasing agency, the proceeds of any sales of supplies and manufactured materials made under agreement, and the contract price of the work not terminated.

(iii) Absent complete agreement under subparagraph (b) of this paragraph, the procurement officer shall pay the contractor the following amounts, provided payments agreed to under subparagraph (b) shall not duplicate payments under this subparagraph:

(A) contract prices for supplies or services accepted under the contract;

(B) costs incurred in preparing to perform the terminated portion of the work plus a fair and reasonable profit on such portion of the work (such profit shall not include anticipatory profit or consequential damages) less amounts paid to or to be paid for accepted supplies or services; provided, however, that if it appears that the contractor would have been sustained a loss if the entire contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

(C) costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to the Contractor's Obligations paragraph of this clause. These costs must not include costs paid in accordance with subparagraph (c)(ii) of this paragraph;

(D) the reasonable settlement costs of the contractor including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection terminated portion of this contract. The total sum to be paid the contractor under this subparagraph shall not exceed the total contract price reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph (b) of this paragraph, and the contract price of work not terminated.

(iv) Costs claimed or agreed to under this section shall be in accordance with applicable sections of the Colorado Procurement Code.

R-24-106-101-09 Novation, Assignment or Change of Name

(a) Assignment. No contract is transferable, or otherwise assignable, without the written consent of the procurement officer, provided, however, that a contractor may assign monies receivable under a contract after due notice to the purchasing agency.

(b) Recognition of a Successor in Interest Novation. When in the best interest of the purchasing agency, a successor in interest may be recognized in a novation agreement in which the transferor and the transferee shall agree that:

(i) the transferee assumes all of the transferor's obligations;

(ii) the transferor waives all rights under the contract as against the agency; and

(iii) unless the transferor guarantees performance of the contract by the transferee, the transferee shall, if required, furnish a satisfactory performance bond.

(c) Change of Name. When a contractor requests to change the name in which it holds a contract with a purchasing agency, the procurement officer responsible for the contract shall, upon receipt of a document indicating such change of name (for example, an amendment to the articles of incorporation of the corporation), enter into an agreement with the requesting contractor to effect such a change of name. The agreement changing the name should specifically indicate that no other terms and conditions of the contract are thereby changed.

ARTICLE 107 COST PRINCIPLES

R-24-107-101 Administrative Rules - Cost Reimbursement

R-24-107-101-01 Applicability of Cost Principles

(a) Application. This subpart contains cost principles and procedures to be used as guidance in:

(i) establishment of contract cost estimates and prices under contracts made by competitive sealed proposals where the award may not be based on adequate price competition, sole source procurement, contracts for certain services;

(ii) establishment of price adjustments for contract changes;

(iii) pricing of termination for convenience settlements; and

(iv) any other situation in which cost analysis is required.

(b) Limitation. Cost principles in this subpart are not applicable to:

(i) the establishment of prices under contracts made by competitive sealed bidding or otherwise based on adequate competition rather than the analysis of individual, specific cost elements, except that this subpart does apply to the establishment of adjustments of price for changes made to such contracts;

(ii) prices which are fixed by law or regulation;

(iii) prices which are based on established catalogue prices as defined in §24-103-101(2) CRS, or established market price; and

(iv) stipulated unit prices.

R-24-107-101-02 Allowable Costs

(a) General. Any contract cost proposed for estimating purposes or invoiced for cost-reimbursement purposes shall be allowable as provided in the contract. The contract shall provide that the total allowable cost of a contract is the sum of the allowable direct costs actually incurred (or, in the case of forward pricing, the amount estimated to be incurred) in the performance of the contract in accordance with its terms, plus the properly allocable portion of the allowable indirect costs, less any applicable credits (such as discounts, rebates, refunds, and property disposal income).

(b) Accounting Consistency. All costs shall be accounted for in accordance with generally accepted accounting principles and in a manner that is consistent with the contractor's usual accounting practices in charging costs to other activities. In pricing a proposal, a contractor shall estimate costs consistently with cost accounting practices used in accumulating and reporting costs.

(c) When Allowable. The contract shall provide that costs shall be allowed to the extent they are:

(i) reasonable, as defined in Rule R-24-107-101-03 (Reasonable Costs);

(ii) allocable, as defined in Rule R-24-107-101-04 (Allocable Costs);

(iii) not made unlawful under any applicable law;

(iv) not allowable under Rule R-24-107-101-05 (Treatment of Specific Costs) or Rule R-24-107-101-06 (Costs Requiring Prior Approval to be Allowable); and

(v) actually incurred or accrued and accounted for in accordance with generally accepted accounting principles in the case of costs invoiced for reimbursement.

R-24-107-101-03 Reasonable Costs

Any cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by an ordinarily prudent person in the conduct of competitive business. In determining the reasonableness of a given cost, consideration shall be given to:

(a) whether the cost is of a type generally recognized as ordinary and necessary for the conduct of the contractor's business or the performance of the contract;

(b) the restraints inherent in and the requirements imposed by such factors as generally accepted sound business practices, arm's length bargaining, federal and state laws and regulations, and contract terms and specifications;

(c) the action that a prudent businessman would take under the circumstances, considering responsibilities to the owners of the business, employees, customers, the purchasing agency, and the general public;

(d) significant deviations from the contractor's established practices which may unjustifiably increase the contract costs; and

(e) any other relevant circumstances.

R-24-107-101-04 Allocable Costs

(a) General. A cost is allocable if it is assignable or chargeable to one or more cost objectives in accordance with relative benefits received and if it:

(i) is incurred specifically for the contract;

(ii) benefits both the contract and other work, and can be distributed to both in reasonable proportion to the benefits received; or

(iii) is necessary to the overall operation of the business, although a direct relationship to any particular cost objective cannot be shown.

(b) Allocation Consistency. Costs are allocable as direct or indirect costs. Similar costs (those incurred for the same purpose, in like circumstances) shall be treated consistently either as direct costs or indirect costs except as provided by these regulations. When a cost is treated as a direct cost in respect to one cost objective, it and all similar costs shall be treated as a direct cost for all cost objectives.

Further, all costs similar to those included in any indirect cost pool shall be treated as indirect costs. All distributions to cost objectives from a cost pool shall be on the same basis.

(c) Direct Cost. A direct cost is any cost which can be identified specifically with a particular cost objective. A direct cost shall be allocated only to its specific cost objective. To be allowable, a direct cost must be incurred in accordance with the terms of the contract.

(d) Indirect Costs

(i) An indirect cost is one identified with more than one cost objective. Indirect costs are those remaining to be allocated to the several cost objectives after direct cost have been determined and charged directly to the contract or other work as appropriate. Any direct costs of minor dollar amounts may be treated as indirect costs, provided that such treatment produces substantially the same results as treating the cost as a direct cost.

(ii) Indirect costs shall be accumulated into logical cost groups with consideration of the reasons for incurring the costs. Each group should be distributed to cost objectives benefiting from the costs in the group. Each indirect cost group shall be distributed to the cost objectives substantially in proportion to the benefits received by the cost objectives. The number and composition of the groups and the method of distribution should not unduly complicate indirect cost allocation where substantially the same results could be achieved through less precise methods.

(iii) The contractor's method of distribution may require examination when:

(A) any substantial difference exists between the cost patterns of the work performed under the contract and the contractor's other work;

(B) any significant change occurs in the nature of the business, the extent of subcontracting, fixed asset improvement programs, inventories, the volume of sales and production, manufacturing processes, the contractor's products, or other relevant circumstances; or

(C) indirect cost groups developed for a contractor's primary location are applied to off-site locations. Separate cost groups for costs allocable to off-site locations may be necessary to distribute the contractor's costs on the basis of the benefits accruing to the appropriate cost objectives.

(iv) The base period for indirect cost allocation is the one in which such costs are incurred and accumulated for distribution to work performed in that period. Normally, the base period is the contractor's fiscal year. A different base period may be appropriate under unusual circumstances. In such cases, an appropriate period should be agreed to in advance.

R-24-107-101-05 Treatment of Specific Costs

(a) Advertising. The only allowable advertising costs are those for:

(i) the recruitment of personnel;

(ii) the procurement of scarce items;

(iii) the disposal of scrap or surplus materials;

(iv) the listing of a business' name and location in a classified directory; and

(v) other forms of advertising as approved by the purchasing agency when in the best interest of the agency.

(b) Bad Debts. Bad debts include losses arising from uncollectible accounts and other claims, such as dishonored checks, employee advances, and related collection and legal costs. All bad debt costs are unallowable.

(c) Contingencies

(i) Contingency costs are contributions to a reserve account for unforeseen costs. Such contingency costs are unallowable except as provided in subsection (c)(ii) of this section.

(ii) For the purpose of establishing a contract cost estimate or price in advance of performance of the contract, recognition of uncertainties within a reasonably anticipated range of costs may be required and is not prohibited by this subsection. However, where contract clauses are present which serve to remove risks from the contractor, there shall not be included in the contract price a contingency factor for such risks. Further, contributions to a reserve for self-insurance in lieu of, and not in excess of, commercially available liability insurance premiums, are allowable as an indirect charge.

(d) Depreciation and Use Allowances

(i) Depreciation and use allowances are allowable to compensate contractors for the use of buildings, capital improvements and equipment. Depreciation is a method of allocating the acquisition cost of an asset to periods of its useful life. Useful life refers to the asset's period of economic usefulness in the particular contractor's operation as distinguished from its physical life. Use allowances provide compensation in lieu of depreciation or other equivalent costs. Consequently, these two methods may not be combined to compensate contractors for the use of any one type of property.

(ii) The computation of depreciation or use allowances shall be based on acquisition costs. When the acquisition costs are unknown, reasonable estimates may be used.

(iii) Depreciation shall be computed using any generally accepted method, provided that the method is consistently applied and results in equitable charges considering the use of the property. The straight-line method of depreciation is preferred unless the circumstances warrant some other method. However, the purchasing agency will accept any method which is accepted by the Internal Revenue Service.

(iv) In order to compensate the contractor for use of depreciated, contractor-owned property which has been fully depreciated on the contractor's books and records and is being used in the performance of a contract, use allowances are allowable, provided that they are computed in accordance with an established industry or government schedule or other method mutually agreed upon by the parties. If a schedule is not used, factors to consider in establishing the allowance are the original cost,

remaining estimated useful life, the reasonable fair market value, the effect of any increased maintenance or decreased efficiency.

(e) Entertainment

(i) Entertainment costs include costs of amusements, social activities and incidental costs relating thereto, such as meals, beverages, lodging, transportation and gratuities. Entertainment costs are unallowable.

(ii) Nothing herein shall make unallowable a legitimate expense for employee morale, health, welfare, food service, or lodging cost; except that, where a net profit is generated by such employer related services, it shall be treated as a credit as provided in Section R-24-107-101-07 (Applicable Credits). This section shall not make unallowable costs incurred for meetings or conferences, including, but not limited to, costs of food, rental facilities, and transportation where the primary purpose of incurring such cost is the dissemination of technical information or the stimulation of production.

(f) Fines and Penalties. Fines and penalties include all costs incurred as the result of violations of or failure to comply with federal, state and local laws and regulations. Fines and penalties are unallowable costs unless incurred as a direct result of compliance with specific provisions of the contract or written instructions of the procurement officer. To the extent that workmen's compensation is considered by state law to constitute a fine or penalty, it shall not be an allowable cost under this subsection.

(g) Gifts, Contributions and Donations. A gift is property transferred to another person without the other person providing return consideration of equivalent value. Reasonable costs for employee morale, health, welfare, food services, or lodging are not gifts and are allowable. Contributions and donations are property transferred to a nonprofit institution which are transferred in exchange for supplies or services of equivalent fair market value rendered by a nonprofit institution. Gifts, contributions and donations are unallowable.

(h) Interest Costs

(i) Interest is a cost of borrowing. Interest is not allowable except as provided in subsection (h)(ii) of this section.

(ii) Interest costs on contractor claims for payments due under purchasing agency contracts shall be allowable as provided in §24-209-301 CRS.

(iii) Losses Incurred Under Other Contracts. A loss is the excess of costs over income earned under a particular contract. Losses may include both direct and indirect costs. A loss incurred under one contract may not be charged to any other contract.

(i) Material Costs

(i) Material costs are the costs of all supplies, including raw material, parts and components (whether acquired by purchase from an outside source

or acquired by transfer from any division, subsidiary, or affiliate under the common control of the contractor), which are acquired in order to perform the contract. Material costs are allowable, subject to subsection (j)(ii) and subsection (j)(iii) of this section. In determining material costs, consideration shall be given to reasonable spoilage, reasonable inventory losses and reasonable overages.

(ii) Material costs shall include adjustments for all available discounts, refunds, rebates and allowances which the contractor reasonably should take under the circumstances, and for credits for proceeds the contractor received or reasonably should receive from salvage and material returned to suppliers.

(iii) Allowance for all materials transferred from any division (including the division performing the contract), subsidiary, or affiliate under the common control of the contractor shall be made on the basis of costs incurred by the transferor (determined in accordance with these costs principles regulations, except that double charging of indirect costs is unallowable), except the transfer may be made at the established price provided that the price of materials is not determined to be unreasonable by the procurement officer and the price is not higher than the transferor's current sales price to its most favored customer for a like quantity under similar payment and delivery conditions and:

(A) the price is established either by the established catalogue price, as defined in §24-103-101(2) CRS; or

(B) by the lowest price offer obtained as a result of competitive sealed bidding or competitive sealed proposals conducted with other businesses that normally produce the item in similar quantities.

(j) Taxes

(i) Except as limited in subsection (k)(ii) of this section all taxes which the contractor is required to pay and which are paid and accrued in accordance with generally accepted accounting principles are allowable.

(ii) The following costs are unallowable:

(A) federal income taxes and federal excess profit taxes;

(B) all taxes from which the contractor could have obtained an exemption, but failed to do so, except where the administrative cost of obtaining the exemption would have exceeded the tax savings realized from the exemption;

(C) any interest, fines, or penalties paid on delinquent taxes unless incurred at the written direction of the procurement officer; and

(D) income tax accruals designed to account for the tax effects of differences between taxable income and pre-tax income as reflected by the contractor's books of account and financial statements.

(iii) Any refund of taxes which were allowed as a direct cost under the contract shall be credited to the contract. Any refund of taxes which were

allowed as an indirect cost under a contract shall be credited to the indirect cost group applicable to contracts being priced or costs being reimbursed during the period in which the refund is made.

(iv) Direct government charges for services such as water, or capital improvements such as sidewalks, are not considered taxes and are allowable costs.

R-24-107-101-06 Cost Requiring Prior Approval to be Allowable

(a) General. The costs described in subsections (b), (c), (d), and (e) of this section are allowable as direct costs to cost-reimbursement type contracts to the extent that they have been approved in advance by the procurement officer. In other situations those costs are negotiable in accordance with general standards set out herein.

(b) Pre-Contract Costs. Pre-contract costs are those incurred prior to the effective date of the contract directly pursuant to, and in anticipation of, the award of the contract. Such costs are allowable to the extent that they would have been allowable if incurred after the date of the contract; provided that, in the case of a cost-reimbursement type contract, a special provision must be inserted in the contract setting forth the period of time and maximum amount of cost which will be covered as allowable pre-contract costs.

(c) Bid and Proposal Costs. Bid and proposal costs are the costs incurred in preparing, submitting and supporting bids and proposals. Reasonable ordinary bid and proposal costs are allowable as direct costs only to the extent that they are specifically permitted by a provision of the contract or solicitation document. Where bid and proposal costs are allowable as direct costs, to avoid double accounting, the same bid and proposal costs shall not be charged as indirect costs.

(d) Insurance

(i) Insurance costs are the costs of obtaining insurance in connection with performance of the contract or contributions to a reserve account for the purpose of self-insurance. Ordinary and necessary insurance costs are allowable in accordance with these cost principles. Self-insurance contributions are allowable only to the extent of the cost to the contractor to obtain similar insurance.

(ii) Insurance costs may be approved as a direct cost only if the insurance is specifically required for the performance of the contract.

(iii) Actual losses which should reasonably have been covered by permissible insurance or were expressly covered by self-insurance are unallowable unless the parties expressly agree otherwise in the terms of the contract.

(e) Litigation Costs. Litigation costs include all filing fees, legal fees, expert witness fees, and all other costs involved in litigating claims in court or before an administrative board. Litigation costs are allowable as indirect costs in accordance with these regulations, except

that costs incurred in litigation against the purchasing agency are unallowable.

R-24-107-101-07 Applicable Credits

(a) Definitions and Examples. Applicable credits are receipts or price reductions which offset or reduce expenditures allocable to contracts as direct or indirect costs. Examples include purchase discounts, rebates, allowance, recoveries or indemnification for losses, sale of scraps and surplus equipment and materials, adjustments for overpayments or erroneous charges, and income from employee recreational, incidental, or services and food sales.

(b) Reducing Costs. Credits shall be applied to reduce related direct or indirect costs.

(c) Refund. The purchasing agency shall be entitled to a cash refund if the related expenditures have been paid to the contractor under a cost-reimbursement type contract.

R-24-107-101-08 Advance Agreements

(a) Purpose. Both the purchasing agency and the contractor should seek to avoid disputes and litigation arising from potential problems by providing in the terms of the contract the treatment to be accorded special or unusual costs.

(b) Procedure Required. Advance agreements may be negotiated either before or after contract award, but shall be negotiated before a significant portion of the cost covered by the agreement has been incurred. Advance agreements shall be in writing, executed by both contracting parties and incorporated in the contract.

(c) Limitation on Costs Covered. An advance agreement shall not provide for any treatment of costs inconsistent with these regulations unless a determination has been made pursuant to Rule R-24-107-101-10 (Authority to Deviate from Cost Principles).

R-24-107-101-09 Use of Federal Cost Principles

(a) Cost Negotiations. In dealing with contractors operating according to federal cost principles, such as Defense Acquisition Regulation, Section 15, or Federal Procurement Regulations, Part 1-15, the procurement officer, after notifying the contractor, may use the federal cost principles as guidance in contract negotiations, subject to subsection (b) of this section.

(b) Incorporation of Federal Cost Principles: Conflicts Between Federal Principles and This Part

(i) In contracts not awarded under a program which is funded by federal assistance funds, the procurement officer may explicitly incorporate federal cost principles into a solicitation and thus into any contract awarded pursuant to that solicitation. The procurement officer and the

contractor by mutual agreement may incorporate federal cost principles into a contract during negotiation or after award. In either instance, the language incorporating the federal cost principles shall clearly state that to the extent federal cost principles conflict with the regulations issued pursuant to §25-107-101 CRS, the state rules shall control.

(ii) In contracts awarded under a program which is financed in whole or in part by federal assistance funds, all requirements set forth in the assistance document including specified federal cost principles, must be satisfied. Therefore, to the extent that the cost principles specified in the grant document conflict with the cost principles issued pursuant to §24-107-101 CRS, the cost principles specified in the grant shall control.

R-24-107-101-10 Authority to Deviate from Cost Principles

If a procurement officer desires to deviate from the cost principles set forth in these regulations, a written determination shall be made by such officer specifying the reasons for the deviation.

ARTICLE 108 SUPPLY MANAGEMENT

(Repealed. See Statute)

ARTICLE 109 REMEDIES

PART 1 PRELITIGATION RESOLUTION OF CONTROVERSIES

R-24-109-101 Resolution of Controversies

(See Statute)

R-24-109-102-01 Filing of Protest

(a) Subject of Protest. Protestors may file a protest on any phase of solicitation or award, including but not limited to specifications, award, or disclosure of information marked confidential in the bid offer.

(b) Form. The written protest shall include, as a minimum, the following:

(i) the name and address of the protestor;

(ii) appropriate identification of the procurement by bid or award number;

(iii) a statement of the reasons for the protest; and

(iv) any available exhibits, evidence, or documents substantiating the protest.

R-24-109-102-02 Requested Information

Any additional information regarding the protest should be submitted within the time period requested in order to expedite resolution of the

protest. If any party fails to comply expeditiously with any request for information by the Director or head of a purchasing agency, the protest may be resolved without such information.

R-24-109-102-03 Decision

If an action concerning the protest has been commenced in court, the Director or head of a purchasing agency shall not act on the protest but shall refer it to the Attorney General. The decision shall inform the protester of his or her right to appeal administratively or judicially in accordance with Article 109 (Remedies) of the Colorado Procurement Code.

R-24-109-103 Stay of Procurements During Protest

(Repealed. See Statute)

Section 24-109-103 CRS was repealed by the General Assembly effective June 6, 1985. This only affects competitive sealed bids or awards of any type other than Competitive Sealed Proposals. A stay of a contract for Competitive Sealed Proposals is in effect until any protest is resolved pursuant to §24-109-102 CRS. (See §24-103-203(7) CRS, effective April 8, 1996).

R-24-109-104 Entitlement to Costs

(See Statute)

R-24-109-105 Debarment And Suspension

R-24-109-105-01 Suspension

(a) Initiation. After consultation with the affected using agency, the Attorney General, and where practicable, the contractor or potential contractor who is to be suspended, the director may issue a written determination to suspend a person from consideration of contracts pending an investigation to determine whether cause exists for debarment. A notice of suspension, including a copy of the determination, shall be sent to the suspended contractor or prospective contractor. Such notice shall:

(i) state that the suspension will be for the period necessary to complete an investigation into possible debarment, as limited in §24-109-105 CRS;

(ii) inform the suspended person that bids or proposals will not be solicited from him or her and, if received, will not be considered during the period of suspension; and

(iii) inform the contractor or prospective contractor of his or her right to appeal administratively or judicially in accordance with Article 109 (Remedies) of the Colorado Procurement Code.

(b) Effect of Decision. A contractor or prospective contractor is suspended upon issuance of the notice of suspension; the suspension shall remain in effect during any appeals.

R-24-109-105-02 Debarment

(a) Initiation. Following completion of the investigation to determine whether a contractor or prospective contractor has engaged in activities which are a cause for debarment, and after consultation with the affected using agencies and Attorney General, the Director may debar a contractor or prospective contractor. A written notice of debarment shall be sent by certified mail, return receipt requested. The notice shall inform the debarred person of his or her right to appeal the decision administratively or judicially in accordance with Article 109 (Remedies) of the Colorado Procurement Code.

(b) Effect of Debarment Decision. A debarment decision will take effect 30 days after the contractor or prospective contractor receives notice of the decision unless an appeal is filed during that time. After the debarment decision takes effect, the person shall remain debarred unless a court, the Executive Director, or the person who issued the debarment decision orders otherwise or until the debarment period specified in the decision expires. A debarment may be for a specific purchasing agency or may apply to all agencies.

(c) Lists of Debarred and Suspended Persons. The Director shall maintain a current list of all debarred and suspended persons and shall send such lists and updates of it to heads of all purchasing agencies.

R-24-109-106 Resolution of Contract and Breach of Contract Controversies - Applicability - Authority

R-24-109-106-01 Statement of Policy

The Colorado Procurement Code establishes procedures and remedies to resolve contract and breach of contract controversies between the state and a contractor. It is the state's policy to try to resolve all controversies by mutual agreement through informal discussions without litigation. As used in these rules, the word "controversy" is meant to be broad and all-encompassing, including the full spectrum of disagreements from pricing of routine contract changes to claims of breach of contract.

R-24-109-106-02 Decision

(a) Procurement Prior to Issuing Decisions. When a controversy cannot be resolved by mutual agreement, the Director or head of a purchasing agency shall, within 20 working days after receiving a written request by the contractor for a final decision, issue a written decision. Before issuing a final decision, the Director or head of a purchasing agency shall review the facts pertinent to the controversy and secure any necessary assistance from legal, fiscal, and other advisers.

(b) Final Decision. The Director or head of a purchasing agency shall immediately furnish a copy of the decision to the contractor by certified mail, return receipt requested. The decision shall include:

(i) a description of the controversy;

(ii) a reference to the pertinent contract provision;

(iii) a statement of the factual areas of agreement and disagreement;

(iv) the supporting rationale for the decision; and

(v) notice of the contractor's right to appeal the decision administratively or judicially in accordance with the provisions of Article 109 (Remedies) of the Colorado Procurement Code.

(c) Payments of Amounts Found Due. The amount and interest on the amount determined payable pursuant to the decision, less any portion already paid, normally should be paid without awaiting contractor action concerning appeal. Such payment shall be without prejudice to the rights of either party. If, on appeal, such payments are required to be returned, interest shall be paid from the date of payment.

PART 2 APPEALS

R-24-109-201 Appeal to the Executive Director

(See Statute)

R-24-109-202 Rules of Procedure

(See Statute)

R-24-109-202-01 Filing of Appeals

(a) When to file. Appeals of decisions of the Director or head of a purchasing agency shall be submitted in writing to the Executive Director within ten (10) working days of the date a decision is mailed or within twenty (20) working days of a decision regarding a suspension, debarment, or contract controversy. Appeals received after the prescribed time periods shall not be considered. (See §24-109-203 CRS.)

(b) Form. The written appeal shall include copies of all documents and evidence previously submitted to the Director or head of a purchasing agency, any additional relevant information, and the decision rendered by the Director or head of a purchasing agency.

(c) Content. The appeal shall be limited to the issues raised in the original protest. However, the appeal may include new evidence or additional information related to those issues or issues related to the conduct of the protest process.

R-24-109-202-02 Additional Information

The Executive Director may request that the parties submit any additional information necessary to make a decision on the appeal. If any party fails to submit requested information within the time period set by the Executive Director, the appeal may be considered without such information.

R-24-109-202-03 Hearing by the Executive Director

(a) Request for Hearing. A contractor or prospective contractor bringing an appeal may request in writing that the Executive Director conduct a hearing on the appeal.

(b) Notice of Hearing. If a hearing is requested, the Executive Director, or his designee, shall send a written notice of the time and place of the hearing to all parties and the Attorney General. Such notice shall be sent by certified mail, return receipt requested.

(c) Hearing Procedures. Hearings shall be as informal as possible under the circumstances. The weight to be attached to any evidence presented shall be within the discretion of the Executive Director or his designee. Stipulations of fact agreed upon by the parties may be used as evidence at the hearing. The Executive Director, or his designee, may request evidence in addition to that presented by the parties. A hearing may be recorded but need not be transcribed except at the request and expense of the contractor or prospective contractor. A record of those present, identification of any written evidence presented, copies of all written statements, and a summary of the hearing shall be sufficient record. The Executive Director or his designee may:

(i) hold informal conferences to settle, simplify, or fix the issue or to consider other matters that may aid in an expeditious disposition of the appeal;

(ii) require parties to state their position with respect to the various issues;

(iii) require parties to produce for examination those relevant witnesses and documents under their control;

(iv) regulate the course of the hearing and conduct of participants;

(v) receive, rule on, exclude, or limit evidence and limit lines of questioning or testimony which are irrelevant, immaterial, or unduly repetitious;

(vi) request and set time limitation for submission of briefs; and

(vii) administer oaths or formulations.

R-24-109-203 Time Limitation for Appeals

(See Statute)

R-24-109-204 Decision of the Executive Director

The Executive Director, or his designee, shall issue a final decision on the issue. Copies of the decision shall inform the contractor or prospective contractor of his or her rights to judicial appeals under Article 109 (Remedies) of the Colorado Procurement Code. However, if an action concerning the protest, suspension, debarment, or contract

controversy has been commenced in court, the Executive Director shall not act on the matter, but shall refer it to the Attorney General.

R-24-109-205 Appeals to District Court

(See Statute)

R-24-109-206 Time Limitations on Appeals to the District Court

(See Statute)

PART 3 INTEREST

(See Statute)

PART 4 SOLICITATIONS AND AWARDS IN VIOLATION OF THE LAW

R-24-109-401 Applicability

This Rule addresses only requirements of procurement law. Any other violations of law or rule are not considered in this review process.

R-24-109-401-01 Definitions

(a) An "unauthorized purchase" is any situation where a purchase has occurred or a purchase commitment has been made to a vendor to obtain goods or services, and:

(i) the requesting agency has not followed established applicable purchasing statutes and rules, or

(ii) a purchase or commitment to purchase is made by a person(s) who is not so authorized.

(b) "Ratification" is the act of the using agency's purchasing director, after review of all facts involved in an unauthorized purchase, sanctioning the unauthorized purchase.

(c) "Responsible individual(s)" is the person(s) who has made an unauthorized purchase.

R-24-109-402 Remedies Prior to an Award

(See Statute)

R-24-109-403 Remedies After an Award

(See Statute)

R-24-109-404 Liability of Public Employees

R-24-109-404-01 Authority of the Director or Head of a Purchasing Agency.

The director or head of a purchasing agency is authorized, after review and consideration of all facts involved in an unauthorized purchase, to decide whether to ratify an unauthorized purchase.

R-24-109-404-02 Factors to be Considered in Ratification of an Unauthorized Purchase.

(a) The director or head of a purchasing agency, or their designee, shall consider all factors related to the procurement including, but not limited to, the following in making a decision whether or not to ratify an unauthorized purchase:

(i) the facts and circumstances giving rise to the need for the good or service, including the responsible individual's explanation as to why established procedures were not followed, and any lack of information or training on the part of the responsible individual;

(ii) indications of intent to deliberately evade established purchasing procedures;

(iii) whether the purchase, if it had been made according to established procedures, would have been reasonable (prudent) and appropriate;

(iv) the extent to which any competition was obtained;

(v) whether this is the first occurrence, or a repeat instance, by the responsible individual;

(vi) whether appropriate written assurances and safeguards have been established to preclude a subsequent unauthorized procurement; and

(vii) indications as to whether either the agency or vendor has acted fraudulently or in bad faith.

(b) A decision to ratify an unauthorized purchase shall weigh the above noted factors as they apply to the express goals of the Colorado Procurement Code, §24-101-102 CRS, and in particular fairness to any vendor who has acted fairly and in good faith.

R-24-109-404-03 Purchasing Agency Actions - Authorized Ratification

(a) After consideration of the above factors, the state purchasing director or head of a purchasing agency may take one of the following actions:

(i) ratify the responsible individual's action and authorize issuance of a payment voucher, voucher request or purchase order if the procurement meets the substantive requirements of law and is only a procedural violation; or

(ii) refuse to ratify the responsible individual's action, but ratify the commitment and authorize issuance of a payment voucher, voucher request or purchase order if the procurement fails to meet the substantive requirements of law, the vendor has not acted fraudulently or in bad

faith, and ratification of the commitment is in the best interests of the State; or

(iii) refuse to ratify the responsible individual's action and authorize issuance of a payment voucher, voucher request or purchase order for only the amount of actual expenses and reasonable profit, if the procurement fails to meet the substantive requirements of law, the vendor has not acted fraudulently or in bad faith, and ratification of the commitment is not in the best interests of the state.

(b) When ratification is denied pursuant to (a)(ii) or (a)(iii) of this subsection 04 above, a purchase order shall not be issued except in cases where it is necessary to effect payment and the purchase order shall so indicate.

(c) If during the review process, it is determined that:

(i) the vendor has acted fraudulently or in bad faith, the ratification shall be denied and there shall be no authorization of a payment voucher, voucher request or purchase order; or

(ii) the responsible person has acted fraudulently or in bad faith, there shall be no ratification, but authorization to issue a payment voucher, voucher request or purchase order may be given.

R-24-109-404-04 Purchasing Agency Actions - In the Event of Denial

(a) In the event the director or head of a purchasing agency refuses to ratify the unauthorized procurement, the following actions shall occur:

(i) notification shall be sent to the responsible individual, the state controller, their agency controller and their agency head, that ratification is denied, and that the responsible individual(s) can be held personally liable for payment;

(ii) notification shall be sent to the affected vendor(s) that the State has denied responsibility for the purchase in whole or in part as determined in the ratification review process; and notification shall be sent to the director.

(b) In the event a court action is started involving a procurement that is undergoing a ratification review, the ratification process shall cease and be referred to the Attorney General.

R-24-109-404-05 Written Determination

A written determination setting forth the basis for the decision shall be made and included in the procurement record.

ARTICLE 110 INTERGOVERNMENTAL RELATIONS

PART 1 DEFINITIONS

(See Statute)

PART 2 COOPERATIVE PURCHASING

R-24-110-201-01 Cooperative Purchasing

The Executive Director or designee may approve the purchase of goods or services in accordance with §24-110-201(2) CRS if such purchase is in the best interests of the State, after considering: (1) The interests of Colorado vendors; (2) the competitiveness of pricing under the cooperative procurement; (3) the efficiencies and cost savings of using the cooperative procurement, beyond the savings and administrative convenience achieved from not having to comply with Article 103 of the Colorado Procurement Code; and (4) the purposes of the Colorado Procurement Code, as set forth in §24-101-102 CRS.

(a) The head of a purchasing agency shall make the request through the State Purchasing Director, addressing the considerations set forth above.

(b) The Executive Director or his designee may approve a single purchase, make a conditional approval, or approve participation in an on-going program with the external procurement activity or the local public procurement unit. Participation in an on-going program must be for a specific period of time, not to exceed two years.

PART 3 CONTRACT CONTROVERSIES

(See Statute)

ARTICLE 111 PREFERENCES IN AWARDING CONTRACTS - FEDERAL ASSISTANCE REQUIREMENTS

R-24-111-101 Exemptions for Prescribed Methods of Source Selection

(See Statute)

R-24-111-102 Priorities Among Preferences

(See Statute)

R-24-111-102-01 Minority-owned and Women-owned Business Enterprises

It is the policy of this State that all procurement offices shall make a special effort to solicit and encourage minority-owned and women-owned business participation for state contracts and awards. All state procurement offices are mandated to implement the spirit and direction offered by present or future executive orders relating to this subject. Agencies and institutions are encouraged, to the greatest extent possible without sacrificing adequate competition, to ensure active participation by minority-owned and women-owned business enterprises.

R-24-111-102-02 Preferences

(a) No provision is made in this Code for preferences or set asides for minority-owned or women-owned businesses.

(b) In the event tie low bids are received in response to solicitations for bids for commodities, pursuant to §24-103-202 CRS, preference is given to the Resident bidder, pursuant to §§24-103-202.5 and 8-18-101, CRS.

(c) A Non-Resident bidder shall be subject to the same percentage disadvantage as a Colorado bidder would have in their home state as required in §§8-19-104(2) and 8-19-104(3), CRS.

ARTICLE 112 EFFECTIVE DATE - APPLICABILITY

R-24-112-101-01 Effective Date - Applicability

Rules implementing the Colorado Procurement Law, SB-130, Title 24, shall become effective January 1, 1982. All contracts solicited or entered into after January 1, 1982, shall be in accordance to Title 24, and enacted rules implementing that Title.

COLORADO PROCUREMENT RULES

Editor’s Notes

History

Rules R-24-103-01, R-24-103-202a-10, R-12-103-202.5, R-24-103-204-03 eff. 11/01/2007.

Rule R-24-103-204-03(a) emer. rule eff. 08/13/2010; expired eff. 12/11/2010.

Rules R-24-102-206, R-24-103-101-01, R24-103-202b-01, R-103-202.3, R-24-103-402-01, R-24-111-
102-02 eff. 01/01/2014.

Notice of Proposed Rulemaking

Tracking number

2015-00331

Department

200 - Department of Revenue

Agency

201 - Taxpayer Service Division - Tax Group

CCR number

1 CCR 201-2

Rule title

INCOME TAX

Rulemaking Hearing

Date

07/01/2015

Time

09:00 AM

Location

1375 Sherman St., Room 127, Denver, CO 80261

Subjects and issues involved

WITHHOLDING TAX FILING PERIODS AND DUE DATES

Statutory authority

39-21-112(1), and 39-22-604(4), C.R.S.

Contact information

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Title

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WITHHOLDING TAX FILING PERIODS AND DUE DATES

REGULATION 39-22-604(4)

(1) An employer shall be either a quarterly, monthly, or weekly filer based on an annual determination; in exceptional cases, an employer may be a seasonal filer. An employer must file withholding tax returns and remit taxes withheld under one of four rules: the quarterly, monthly, weekly, or seasonal rule in paragraph (3) of this regulation.

(2) **Determination of Status.** The determination of whether an employer is a quarterly, monthly, weekly or seasonal filer for a calendar year is based on an annual determination made by the Executive Director. With the exception of a seasonal filer, this determination is made based upon the aggregate amount of Colorado withholding tax reported by the employer for the lookback period as defined in paragraph (2)(e) of this regulation.

(a) *Quarterly filer.* An employer is a quarterly filer for the entire calendar year if the aggregate amount of Colorado withholding tax reported for the lookback period is less than $7,000.

(b) *Monthly filer.* An employer is a monthly filer for the entire calendar year if the aggregate amount of Colorado withholding tax reported for the lookback period is at least $7,000 but not more than $50,000. The Executive Director, upon application therefore, may approve the reclassification of monthly filers to a quarterly filing status if necessary to meet the "no more stringent than corresponding federal requirements" provision of C.R.S. § 39-22-604(4).

(c) *Weekly filer.* An employer is a weekly filer for the entire calendar year if the aggregate amount of Colorado withholding tax reported for the lookback period is more than $50,000.

(d) *Seasonal filer.* An employer is a seasonal filer for the entire calendar year if the business is not operating for the entire calendar year and if there is no Colorado withholding made for that part of the year during which the business is not operating.

(e) *Lookback period.* The lookback period for each calendar year is the most recent twelve-month period ending June 30. The aggregate amount of Colorado withholding tax liability as originally filed for the lookback period will determine the status as a quarterly, monthly, or weekly filer. New employers shall be treated as having zero tax liability for any part of the lookback period during which they did not exist as an employer.

(3) **Due Dates.**

(a) *Quarterly rule.* An employer that is a quarterly filer must file a Colorado withholding tax return and pay the Colorado tax withheld for the calendar quarter on or before the last day of the month following the close of the calendar quarter. A return must be filed for each quarter even if no taxes have been withheld.

(b) *Monthly rule.* An employer that is a monthly filer must file a Colorado withholding tax return and pay the Colorado tax withheld for the month on or before the fifteenth day of the following month. A return must be filed for each month even if no taxes have been withheld.

(c) *Weekly rule.* An employer that is a weekly filer must remit any Colorado withholding taxes accumulated as of any Friday on or before the third business day following such Friday.

(d) *Seasonal rule.* In order to file on a seasonal basis, the employer must obtain approval from the Department and supply the scheduled months for which there is withholding. An employer that is a seasonal filer must file a Colorado withholding tax return and pay the Colorado tax withheld on or before the fifteenth day of the month following each month of operation. Returns must be filed for scheduled months of operation even if no taxes have been withheld.

(e) Filing and payments are required only on business days. If the due date falls on any day that is not a business day, the taxes will be treated as timely paid if paid on the first business day thereafter.

(f) *Change of status.* When an employer's Colorado withholding tax filing status is required to be changed as a result of a new lookback period, any resulting change in filing status shall become effective on January 1 of the following year.

(4) Required withholding from winnings, which shall include gaming and racing, shall be filed with a return and remitted on a monthly basis on or before the fifteenth of the following month.

(5) **Electronic Funds Transfer.** Any employer who has an annual estimated withheld tax liability of more than $50,000 must remit any withheld tax by electronic funds transfer (EFT). The annual estimated withheld tax will be based on the tax liability for the most recent twelve month period ending June 30. The EFT shall be made using standard banking conventions as outlined in the application and agreement for EFT between the taxpayer and the Department.

(a) *Undue Hardship.* The Department may grant in cases of undue hardship a yearly waiver from the requirement to remit all withholding tax liability by EFT. The Department will, upon written request from the taxpayer, grant such request only if it determines, and the employer adequately proves, to the satisfaction of the executive director that good cause exists to allow a waiver for hardship. Taxpayers can submit such written request to the Department each year upon receiving notice of the requirement to make EFT by sending a written request to:

Colorado Department of Revenue
Denver, CO 80261-0009

(i) Undue hardship means excessive or extraordinary hardship. Undue hardship will be determined on a case-by-case basis, and any determination of undue hardship will be fact-specific, and will be limited to the information provided by the taxpayer. Undue hardship cannot be established by general and conclusory statements or on a general distrust of information technology such as the Internet, electronic communications, or the security of information provided by means of electronic transfer. Undue hardship may be demonstrated by the documented general unavailability of the technology and communications systems necessary for electronic filing and electronic payment. Undue hardship may also be demonstrated on the basis of the substantial financial cost to the taxpayer relative to the amount of the tax owed by the taxpayer for the current tax year.

Cross Reference

(1) The publication DRP-5782 describing the EFT Program and Form DR-5785, “Authorization For Electronic Funds Transfer (EFT) For Tax Payments” may be examined at an Colorado State Publications Depository Library (see http://www.cde.state.co.us/stateinfo/sldepsit.htm for a listing

of locations). Copies of the publication DRP-5782 describing the EFT program or Form DR-5785, “Authorization For Electronic Funds Transfer (EFT) For Tax Payments” may be obtained from the Department Forms Room, on the first floor at 1375 Sherman Street, Denver, Colorado 80203 and via the Department’s website at:

https://www.colorado.gov/pacific/tax/forms-number-order

Scroll down the Web page to the listing of these forms by form number. These forms appear near the bottom of the list.

WITHHOLDING TAX FILING PERIODS AND DUE DATES.

REGULATION 39-22-604.(4).

(1) With respect to Colorado income tax attributable to payments made after December 31, 1993, aAn employer shall be is either a quarterly filer, a monthly filer, or a weekly filer based on an annual determination; or, in exceptional cases, an employer may be a seasonal filer. An employer must file withholding tax returns and/or remit taxes withheld under one of four rules: the quarterly rule in paragraph (b)(2) of this section, the monthly rule in paragraph (b)(3) of this section, the weekly rule in paragraph (b)(4) of this section, or the seasonal rule in paragraph (b)(5)(3) of this regulation section.

(2) **Determination of Status.** The determination of whether an employer is a quarterly, a monthly, or a weekly or seasonal filer for a calendar year is based on an annual determination made by the Executive Director., and With the exception of a seasonal filer, this determination is made based depends upon the aggregate amount of Colorado withholding tax reported by the employer for the lookback period as defined in paragraph (b)(6)(2)(e) of this regulation sction.

(a) *Quarterly filer.* An employer is a quarterly filer for the entire calendar year if the aggregate amount of Colorado withholding tax reported for the lookback period is less than $7,000.

(b) *Monthly filer.* An employer is a monthly filer for the entire calendar year if the aggregate amount of Colorado withholding tax reported for the lookback period is at least $7,000 but not more than $50,000. The Executive Director, upon application therefore, may approve the reclassification of monthly filers to a quarterly filing status if necessary to meet the "no more stringent than corresponding federal requirements" provision of C.R.S. § 39-22-604(4).

(c) *Weekly filer.* An employer is a weekly filer for the entire calendar year if the aggregate amount of Colorado withholding tax reported for the lookback period is more than $50,000.

(d) *Seasonal filer.* An employer is a seasonal filer for the entire calendar year if the business is not operating for the entire calendar year and if there is no Colorado withholding made for during that part of the year during which the business is not operating.

(e) *Lookback period.* The lookback period for each calendar year is the most recent twelve-month period ending the preceding June 30. The aggregate amount of Colorado withholding tax liability as originally filed for the lookback period will determine the status as a quarterly, monthly, or weekly filer. New employers shall be treated as having zero tax liability for any part of the lookback period during which they did not exist as an employer.

(3) **Due Dates.**

(a) *Quarterly rule.* An employer that is a quarterly filer must file a Colorado withholding tax return and pay the Colorado tax withheld for the calendar quarter on or before the last day of the month following the close of the calendar quarter. A return must be filed for each quarter even if no taxes have been withheld.

(b) *Monthly rule.* An employer that is a monthly filer must file a Colorado withholding tax return and pay the Colorado tax withheld for the month on or before the fifteenth day of

the following month. A return must be filed for each month even if no taxes have been withheld.

(c) *Weekly rule.* An employer that is a weekly filer must remit any Colorado withholding taxes accumulated as of any Friday on or before the third business day following such Friday.

(d) *Seasonal rule.* In order to file on a seasonal basis, the employer must obtain approval from the Department ~~of Revenue~~ and supply the scheduled months ~~in~~ for which there is withholding. An employer that is a seasonal filer must file a Colorado withholding tax return and pay the Colorado tax withheld on or before the fifteenth day of the month following each month of operation. Returns must be filed for scheduled months of operation even if no taxes have been withheld.

(e) Filing and payments are required only on ~~Colorado Department of Revenue~~ business days. If the due date falls on any day that is not a business day, the taxes will be treated as timely paid if paid on the first business day thereafter.

(f) *Change of status.* When an employer's Colorado withholding tax filing status is required to be changed as a result of a new lookback period, any resulting change in filing status shall become effective on January 1 of the following year.

(4) Required withholding from winnings, which shall include gaming and racing, shall be filed with a return and remitted on a monthly basis on or before the fifteenth of the following month.

(5) **Electronic Funds Transfer.** Any employer who has an annual estimated withheld tax liability of more than $50,000 ~~fifty thousand dollars~~ must remit any withheld tax by electronic funds transfer (EFT). The annual estimated withheld tax will be based on the tax liability for the most recent twelve month period ending June 30. The EFT ~~electronic funds transfer~~ shall be made using standard banking conventions as outlined in the application and agreement for EFT ~~electronic funds transfer~~ between the taxpayer and the Department.

(a) *Undue Hardship.* The Department may grant in cases of undue hardship a yearly waiver from the requirement to remit all withholding tax liability by EFT. The Department will, upon written request from the taxpayer, grant such request only if it determines, and the employer adequately proves, to the satisfaction of the executive director that good cause exists to allow a waiver for hardship. Taxpayers can submit such written request to the Department each year upon receiving notice of the requirement to make EFT by sending a written request to:

Colorado Department of Revenue
Denver, CO 80261-0009

(i) Undue hardship means excessive or extraordinary hardship. Undue hardship will be determined on a case-by-case basis, and any determination of undue hardship will be fact-specific, and will be limited to the information provided by the taxpayer. Undue hardship cannot be established by general and conclusory statements or on a general distrust of information technology such as the Internet, electronic communications, or the security of information provided by means of electronic transfer. Undue hardship may be demonstrated by the documented general unavailability of the technology and communications systems necessary for electronic filing and electronic payment. Undue hardship may also be demonstrated on the basis of the substantial financial cost to the taxpayer relative to the amount of the tax owed by the taxpayer for the current tax year.

Cross Reference

(1) The publication DRP-5782 describing the EFT Program and Form DR-5785, “Authorization For Electronic Funds Transfer (EFT) For Tax Payments” may be examined at an Colorado State Publications Depository Library (see http://www.cde.state.co.us/stateinfo/sldepsit.htm for a listing of locations). Copies of the publication DRP-5782 describing the EFT program or Form DR-5785, “Authorization For Electronic Funds Transfer (EFT) For Tax Payments” may be obtained from the Department Forms Room, on the first floor at 1375 Sherman Street, Denver, Colorado 80203 and via the Department’s ~~interment internet~~ Web site at:

https://www.colorado.gov/pacific/tax/forms-number-order

~~http://www.revenue.state.co.us/wagewithforms.html.~~

Scroll down the Web page to the listing of these forms by form number.~~, t~~These forms appear near the bottom of the list.

Notice of Proposed Rulemaking

Tracking number

2015-00332

Department

200 - Department of Revenue

Agency

201 - Taxpayer Service Division - Tax Group

CCR number

1 CCR 201-2

Rule title

INCOME TAX

Rulemaking Hearing

Date

07/01/2015

Time

09:00 AM

Location

1375 Sherman St., Room 127, Denver, CO 80261

Subjects and issues involved

MATERIAL ADVISOR DISCLOSURE OF REPORTABLE OR LISTED TRANSACTIONS

Statutory authority

39-21-112(1), and 39-22-656, C.R.S.

Contact information

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MATERIAL ADVISOR DISCLOSURE OF REPORTABLE OR LISTED TRANSACTIONS

REGULATION 39-22-656

(1) **Colorado Disclosure Statement for Federal Transactions and Colorado Listed Transactions.**

(a) *Federal Transactions.* A material advisor, who is required to file with the Internal Revenue Service pursuant to United States Department of the Treasury Regulation 26 C.F.R. § 301.6111-3, as effective on August 3, 2007 (hereinafter "Treasury Regulation § 301.6111-3") a disclosure statement with respect to a Federal Transaction described in Department regulation 39-22-652, shall file with the Department a complete copy of the IRS form 8918, or any successor form, and amendments thereto, that the material advisor filed, or should have filed, with the Internal Revenue Service.

(b) *Colorado Listed Transactions.*

(i) Except as otherwise noted below, the provisions of Treasury Regulation §301.6111-3 shall apply to a material advisor with respect to a Colorado Listed Transaction.

(ii) The following provisions of Treasury Regulation § 301.6111-3 are modified as follows:

(A) "Listed transaction," as defined in subsection 3(c)(2) of the Treasury Regulation § 301.6111-3 means a Colorado Listed Transaction.

(B) "Tax" or "Federal tax" means Colorado income tax.

(C) The gross income threshold set forth in subsection 3(b)(3) of Treasury Regulation § 301.6111-3 applies and without regard to the state in which the gross income is earned.

(iii) The following provisions of Treasury Regulation §301.6111-3 shall not apply with respect to a Colorado Listed Transaction:

(A) Subsections 3(b)(2)(i)(B) and (D),

(B) Subsections 3(b)(2)(ii)(B) through (D),

(C) Subsection 3(b)(4)(i)(B),

(D) Subsections 3(c)(1) and (13),

(E) The form and content of the disclosure statement set forth in subsection 3(d)(1); except, provisions of said subsection relating to an incomplete form (i.e., Material Advisor's Colorado Listed Transactions Disclosure Statement) and the requirement to amend such form apply,~~.~~

(F) Time for providing disclosure set forth in subsection 3(e) and (f) (see, subsection (c) of Department regulation 39-22-656(c), below, for applicable deadlines), but the remaining provisions of subsection ~~(~~3(e) (regarding time period to file amended disclosures) and (f) (regarding designation agreements) shall apply,

(G) Subsection 3(h) (regarding rulings), and

(H) Subsection 3(i).

(iv) *Content of disclosure.* A material advisor shall, with respect to a Colorado Listed Transaction, file a Material Advisor's Disclosure Statement, which shall include the following:

(A) Material advisor's name, identifying number, telephone number, mailing address; contact person's name, title, and telephone number. If the material advisor is party to a designation agreement, the name(s), address(es), telephone number(s), contact name(s) and telephone number(s) of the other parties to the agreement.

(B) Names, including trade names, if any, mailing and physical location addresses of the Owner and of the Captive Entity.

(C) A description of the material aid, assistance, or advice provided.

(D) Signature of the material advisor and the following attestation: "I declare that I have examined this statement, and to the best of my knowledge and belief, it is true, correct, and complete."

(E) For a Colorado Listed Transaction that is also a Federal Transaction, the material advisor shall file a complete copy of IRS form 8918, or any successor form, and amendments thereto that the material advisor filed, or should have filed, with the Internal Revenue Service, and shall not file a Material Advisor's Colorado Listed Transaction Disclosure Statement.

(v) *Retention of Information.* A material advisor shall, with respect to a Colorado Listed Transaction, retain, for a period of seven years from the date the person first becomes a material advisor, any records in the material advisor's possession or control regarding the following items:

(A) The role of any other entity(ies) or individual(s) known or reasonably believed to have provided material aid, assistance, or advice to the transaction and the name, address, identifying number (if known), and telephone of such entity(ies) or individual(s).

(B) Whether a related entity or individual, an entity or individual without Colorado income tax nexus, a tax-exempt entity, and/or an entity that is not includable in a Colorado combined return is needed in order to obtain the intended tax benefit created by the transaction, and, if so, the name of each such entity or individual, a description of the role of each individual or entity and the name of the individual's or entity's country of existence, state of incorporation and/or state of commercial domicile if a particular country or state (including a particular type of country or state, e.g., separate filing state or combined reporting state) is required to obtain the intended tax benefit.

(C) Whether, in order to obtain the intended tax benefit, the income, or gain from the transaction, is allocated directly or indirectly to an individual or entity that has a net operating loss and/or unused loss or credit and, if so, a description of the role of each individual or entity in the transaction.

(D) A description or copy of the financial instruments used in the transaction.

(E) A description or explanation of the intended tax benefit created by the transaction in each year.

(F) The state and federal tax code section(s) used to claim the tax benefit(s) generated by the transaction

(G) A description of the transaction(s) for which material aid, assistance, or advice, was provided, including the following:

(I) the nature of the expected tax treatment and expected tax benefits created by the transaction for all affected years,

(II) the years the tax benefits are expected to be claimed,

(III) the role of the entities or individuals identified in subsections 1, above,

(IV) the role of the financial instruments identified in subsection 4, above,

(V) a description of how the state and federal tax code section(s) identified in subsection 6, above, are applied and how they allow the taxpayer to obtain the desired tax treatment.

(c) *Time for Providing a Disclosure Statement.*

(i) The material advisor must, with respect to a Federal Transaction or Colorado Listed Transaction, file the applicable disclosure statement within six months of the date the transaction is entered into by the taxpayer. If the person is not a material advisor (see, Treasury Regulation § 301.6111-3(b)(4)) until after the six month period, then the disclosure statement is due the month following the month in which the person first becomes a material advisor.

(ii) The material advisor is not required to file in any subsequent year a disclosure statement for the same or substantially similar transaction, unless the material advisor becomes aware of facts that indicate the disclosure statement is materially incorrect or incomplete. The material advisor shall file an amended disclosure statement on the last day of the month following the quarter in which the material advisor knew or should have known the facts that necessitate the filing of an amended disclosure statement.

(iii) *Filing a Disclosure Statement.* Disclosure statements shall be filed with the:
Colorado Department of Revenue
Field Audit Section
720 S. Colorado Boulevard
Suite 400N
Denver, Colorado 80246

(2) **Effective Date.** A material advisor shall file a disclosure statement concerning a transaction for which the material advisor provides material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, insuring, or carrying out such transaction and such material aid, assistance, or advice is provided by the material advisor on or after May 9, 2009 or the transaction with respect to which the material aid, assistance or advice is provided, occurs on or after May 9, 2009, even though the material aid, assistance, or advice is provided prior to such date.

(3) **Incorporation by Reference.** United States Department of the Treasury Regulation 26 C.F.R. §301.6111-3, as effective on August 3, 2007 ("Treasury Regulation § 301.6111-3") is hereby incorporated by reference. This regulation 39-22-656 does not incorporate later amendments to or editions of Treasury Regulation § 301.6111-3. A copy of Treasury Regulation § 301.6111-3 has been provided to the state publications depository and distribution center. Treasury Regulation § 301.6111-3 may be examined at any state publications depository library. Additionally, the Department shall maintain certified copies of the complete text of Treasury Regulation § 301.6111-3, which shall be available for public inspection during regular business hours. Certified copies of the material incorporated shall be provided at cost upon request. Any member of the public wishing to obtain or examine a copy of Treasury Regulation § 301.6111-3 may contact the:

Colorado Department of Revenue
Office of Tax Policy
1375 Sherman Street
Denver, Colorado, 80203

MATERIAL ADVISOR DISCLOSURE OF REPORTABLE OR LISTED TRANSACTIONS

REGULATION 39-22-656

(1) **Colorado Disclosure Statement for Federal Transactions and Colorado Listed Transactions.**

(a) *Federal Transactions.* A material advisor, who is required to file with the Internal Revenue Service pursuant to United States Department of the Treasury Regulation 26 C.F.R. § 301.6~~0~~111-3, as effective on August 3, 2007 (hereinafter "Treasury Regulation § 301.6~~0~~111-3") a disclosure statement with respect to a Federal Transaction described in Department regulation 39-22-652, shall file with the Department a complete copy of the IRS form 8918, or any successor form, and amendments thereto, that the material advisor filed, or should have filed, with the Internal Revenue Service.

(b) *Colorado Listed Transactions.*

(i) Except as otherwise noted below, the provisions of Treasury Regulation §301.6111-3 shall apply to a material advisor with respect to a Colorado Listed Transaction.

(ii) The following provisions of Treasury Regulation § 301.6111-3 are modified as follows:

(A) "Listed transaction," as defined in subsection 3(c)(2) of the Treasury Regulation § 301.6111-3 means a Colorado Listed Transaction.

(B) "Tax" or "Federal tax" means Colorado income tax.

(C) The gross income threshold set forth in subsection~~s~~ 3(b)(3)~~(i)(B) and 3(b)(3)(ii) (but not 3(b)(3)(i)(A))~~ of Treasury Regulation § 301.6111-3 applies~~y~~ and without regard to the state in which the gross income is earned.

(iii) The following provisions of Treasury Regulation §301.6111-3 shall not apply with respect to a Colorado Listed Transaction:

(A) Subsections 3(b)(2)(i)(B) and (D),

(B) Subsections 3(b)(2)(ii)(B) through (D),

~~(C) Subsection 3(b)(3),~~

(C) ~~s~~Subsection 3(b)(4)(i)(B),

(D) Subsections 3(c)(1) and (13),

(E) The form and content of the disclosure statement set forth in subsection 3(d)(1); except, provisions of said subsection relating to an incomplete form (i.e., Material Advisor's Colorado Listed Transactions Disclosure Statement) and the requirement to amend such form apply,~~.~~

(F) Time for providing disclosure set forth in subsection 3(e) and (f) (see, subsection (c) of Department regulation 39-22-656(c), below, for applicable deadlines), but the remaining provisions of subsection ~~(~~3(e) (regarding time period to file amended disclosures) and (f) (regarding designation agreements) shall apply,

(G) ~~s~~Subsection 3(h) (regarding rulings), and

(H) ~~effective / applicability date set forth in~~ Subsection 3(i).~~,~~

(iv) *Content of disclosure.* A material advisor shall, with respect to a Colorado Listed Transaction, file a Material Advisor's Disclosure Statement, which shall include the following:

(A) Material advisor's name, identifying number, telephone number, mailing address; contact person's name, title, and telephone number. If the material advisor is party to a designation agreement, the name(s), address(es), telephone number(s), contact name(s) and telephone number(s)~~,~~ of the other parties to the agreement.

(B) Names, including trade names, if any, mailing and physical location addresses of the Owner and of the Captive Entity.

(C) A description of the material aid, assistance, or advice provided.

(D) Signature of ~~The disclosure statement shall be signed by~~ the material advisor and ~~shall include~~ the following attestation: "I declare that I have examined this statement, and to the best of my knowledge and belief, it is true, correct, and complete."

(E) For a Colorado Listed Transaction that is also a Federal Transaction, the material advisor shall file a complete copy of IRS form 8918, or any successor form, and amendments thereto that the material advisor filed, or should have filed, with the Internal Revenue Service, and shall not file a Material Advisor's Colorado Listed Transaction Disclosure Statement.

(v) *Retention of Information.* A material advisor shall, with respect to a Colorado Listed Transaction, retain, for a period of seven years from the date the person first becomes a material advisor, any records in the material advisor's possession or control regarding the following items:

(A) ~~t~~The role of any other entity(ies) or individual(s) known or reasonably believed ~~known~~ to have provided material aid, assistance, or advice to the transaction and the name, address, identifying number (if known), and telephone of such entity(ies) or individual(s)

(B) ~~w~~Whether a related entity or individual ~~is needed~~, an entity or individual without Colorado income tax nexus ~~is needed~~, a tax-exempt entity ~~is needed~~, and/or an entity that is not includable in a Colorado combined return is needed~~,~~ in order to obtain the intended tax benefit created by the transaction, and, if so, the name of each such entity or individual, a description of the role of each individual or entity and the name of the individual's or entity's country of existence, ~~or~~ state of incorporation and/or state of commercial domicile if a particular country or state (including a particular type of country or state, e.g., separate filing state

or combined reporting state) is required to obtain the intended tax benefit.

(C) ~~w~~Whether, in order to obtain the intended tax benefit, the income, or gain from the transaction, is allocated directly or indirectly to an individual or entity that has a net operating loss and/or unused loss or credit and, if so, a description of the role of each individual or entity in the transaction.

(D) ~~a~~A description or copy of the financial instruments used in the transaction.

(E) ~~a~~A description or explanation of the intended tax benefit created by the transaction in each year.

(F) ~~t~~The state and federal tax code section(s) used to claim the tax benefit(s) generated by the transaction

(G) ~~a~~A description of the transaction(s) for which material aid, assistance, or advice, was provided, including the following:

(I) the nature of the expected tax treatment and expected tax benefits created by the transaction for all affected years,

(II) the years the tax benefits are expected to be claimed,

(III) the role of the entities or individuals identified in subsections 1 ~~and 2~~, above,

(IV) the role of the financial instruments identified in subsection 4, above,

(V) a description of how the state and federal tax code section(s) identified in subsection 6, above, are applied and how they allow the taxpayer to obtain the desired tax treatment.

(c) *Time for Providing a Disclosure Statement.*

(i) The material advisor must, with respect to a Federal Transaction or Colorado Listed Transaction, file the applicable disclosure statement within six months of the date ~~in which~~ the transaction is entered into by the taxpayer. If the person is not a material advisor (see, Treasury Regulation § 301.6111-3(b)(4)) until after the six month period, then the disclosure statement is due the month following the month in which the person first becomes a material advisor..

(ii) The material advisor is not required to file in any subsequent year a disclosure statement for the same or substantially similar transaction, unless the material advisor becomes aware of facts that indicate the disclosure statement is materially incorrect or incomplete. The material advisor shall file an amended disclosure statement on the last day of the month following the quarter in which the material advisor knew or should have known the facts that necessitate the filing of an amended disclosure statement.

(iii) ~~Notwithstanding subparagraph (i) of this paragraph (c), the Department shall waive the application of any penalty for any disclosure statement for a Colorado Listed Transaction that is filed by a material advisor prior to March 31, 2010. This~~

~~provision is designed to allow any material advisor to comply with the provisions of this regulation.~~

(d) *Filing a Disclosure Statement.* Disclosure statements shall be filed with the:

Colorado Department of Revenue
Field Audit Section
720 S. Colorado Boulevard
Suite 400N
Denver, Colorado 80246

(2) **Effective Date.** A material advisor shall file a disclosure statement concerning a transaction for which the material advisor provides material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, insuring, or carrying out such transaction and such material aid, assistance, or advice is provided by the material advisor on or after May 9, 2009 or the transaction with respect to which the material aid, assistance or advice is provided, occurs on or after May 9, 2009, even though the material aid, assistance, or advice is provided prior to such date.

(3) **Incorporation by Reference.** United States Department of the Treasury Regulation 26 C.F.R. §301.6~~0~~111-3, as effective on August 3, 2007 ("Treasury Regulation § 301.6~~0~~111-3") is hereby incorporated by reference. This regulation 39-22-656 does not incorporate later amendments to or editions of Treasury Regulation § 301.6~~0~~111-3. A copy of Treasury Regulation § 301.6~~0~~111-3 has been provided to the state publications depository and distribution center. Treasury Regulation § 301.6~~0~~111-3 may be examined at any state publications depository library. Additionally, the Department shall maintain certified copies of the complete text of Treasury Regulation § 301.6~~0~~111-3, which shall be available for public inspection during regular business hours. Certified copies of the material incorporated shall be provided at cost upon request. Any member of the public wishing to obtain or examine a copy of Treasury Regulation § 301.6~~0~~111-3 may contact the:

Colorado Department of Revenue
Office of Tax Policy
1375 Sherman Street
Denver, Colorado, 80203

Notice of Proposed Rulemaking

Tracking number

2015-00329

Department

200 - Department of Revenue

Agency

201 - Taxpayer Service Division - Tax Group

CCR number

1 CCR 201-2

Rule title

INCOME TAX

Rulemaking Hearing

Date

07/01/2015

Time

09:00 AM

Location

1375 Sherman St., Room 127, Denver, CO 80261

Subjects and issues involved

FORCED SALE OF LIVESTOCK CREDIT

Statutory authority

39-21-112(1), and 39-22-128, C.R.S.

Contact information

Name

Phil Horwitz

Title

Policy Director

Telephone

303-205-8422

Email

phil.horwitz@state.co.us

~~CREDIT FOR FORCED SALE OF LIVESTOCK DUE TO WEATHER CONDITIONS -CREDIT OF 4.63% FOR INCOME DEFERRED FROM FEDERAL TAXABLE INCOME UNDER IRC SECTION 451(E).~~

~~REGULATION 39-22-128.~~

~~(1) For any income tax year commencing on or after January 1,2002 but prior to January 1,2004, a taxpayer that defers income under Internal Revenue Code (IRC) section 451(e) will be allowed a credit against Colorado income tax. The credit is earned and may be used in the same year the income is deferred on the federal tax return. The credit is computed as 4.63% of the income deferred under IRC section 451(e).~~

~~(2) If the credit under (1) exceeds the income tax due, excess credit may be carried forward for five years. Excess credit is not refundable in any tax year.~~

~~(3) This section does not create any modification, subtraction or addition to federal taxable income related to deferral of income or deferred reporting of income under IRC 451(e).~~

Notice of Proposed Rulemaking

Tracking number

2015-00325

Department

200 - Department of Revenue

Agency

201 - Taxpayer Service Division - Tax Group

CCR number

1 CCR 201-2

Rule title

INCOME TAX

Rulemaking Hearing

Date

07/01/2015

Time

09:00 AM

Location

1375 Sherman St., Room 127, Denver, CO 80261

Subjects and issues involved

HEALTH BENEFIT PLAN CREDIT

Statutory authority

39-21-112(1), and 39-22-125, C.R.S.

Contact information

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Admin III

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~~HEALTH BENEFIT PLAN CREDIT.~~

~~REGULATION 39-22-125.~~

~~(1) Credit. For tax years beginning on or after January 1,2000 eligible resident individuals may take a credit against Colorado income tax for certain health benefit plan premiums paid. The credit is available only in those tax years in which state revenues exceed limitations on state fiscal year spending by amounts established in C.R.S. 39-22-125(6). In October or November of each year, the State will certify whether there are sufficient excess revenues to make this credit available. See Regulation 39-22-120 for years in which the credit is available.~~

~~(2) Credit Allowed.~~

~~(a) The credit allowed is the amount paid for a health benefit plan up to a maximum of $500, but the credit shall not exceed the income tax due for the tax year for which it is claimed. Any unused credit may not be refunded or carried forward as credit toward a subsequent year's income tax. No more than one health benefit plan credit is allowed for any one household.~~

~~(b) Payments made by a taxpayer or their employer for a health plan provided through the employer do not qualify for this credit. The credit applies only to fully insured funds and does not apply to Medicare, Medicaid or self-funded insurance plans. Further, this credit is not allowed for health plan payments that were deducted from federal adjusted gross income for that tax year.~~

~~(3) Eligible Individuals. Colorado resident individuals who purchase or pay premiums for a health benefit plan for themselves, their spouse or their dependents are allowed a credit against Colorado income tax under the following conditions and income limits:~~

~~(a) Benefit Plan Conditions.~~

~~(i) The resident individual, their spouse or their dependent were not covered by a health benefit plan for any part of the income tax year immediately preceding the income tax year for which they are claiming this credit; or~~

~~(ii) The resident individual was allowed and was eligible to claim this credit for the income tax year immediately preceding the income tax year for which they are claiming this credit.~~

~~(b) Income Limits. The following limitations are based on income for the calendar year immediately preceding the tax year for which the credit is claimed. For example, a taxpayer claiming this credit for the tax year ending December 31, 2001, is limited based on his/her calendar year 2000 income.~~

~~(i) For individuals filing a single return with no dependents, federal adjusted gross income may not exceed $25,000.~~

~~(ii) For two individuals filing a joint return with no dependents, federal adjusted gross income may not exceed $30,000.~~

~~(iii) For two married individuals with no dependents filing separate returns, combined federal adjusted gross income may not exceed $30,000.~~

(iv) For individuals with dependents, couples with dependents filing jointly or two married individuals with dependents filing separately, federal adjusted gross income may not exceed $35,000.

(4) Part-year and Nonresidents. Part-year residents may only claim this credit on qualifying payments made while they were residents of Colorado. Nonresidents may not claim this credit.

COLORADO DEPARTMENT OF REVENUE
STATEMENT OF BASIS AND PURPOSE

HEALTH BENEFIT PLAN CREDIT
39-22-125
1 CCR 201-2

Basis

The basis for this rule is §39-21-112(1), and §39-22-125, C.R.S.

Purpose

The purpose for the repeal of this regulation is because the applicable statute was repealed in 2010; therefore, the credit is no longer available and the rule is unnecessary.

Notice of Proposed Rulemaking

Tracking number

2015-00328

Department

200 - Department of Revenue

Agency

201 - Taxpayer Service Division - Tax Group

CCR number

1 CCR 201-2

Rule title

INCOME TAX

Rulemaking Hearing

Date

07/01/2015

Time

09:00 AM

Location

1375 Sherman St., Room 127, Denver, CO 80261

Subjects and issues involved

FOSTER CARE CREDIT

Statutory authority

39-21-112(1), and 39-22-127, C.R.S.

Contact information

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~~FOSTER CARE CREDIT.~~

~~REGULATION 39-22-127.~~

~~(1) A refundable Colorado income tax credit of $500 for operating a qualified foster care home is effective for the 2001 income tax year. The credit is available only to full and part-year Colorado residents. The credit is available only in tax years in which state revenues exceed limitations on state fiscal year spending by amounts established in 39-22-127(5), C.R.S. In October or November of each year, the State will certify whether there are sufficient excess revenues to make this credit available. See Regulation 39-22-120 for years in which the credit is available.~~

~~(2) Part-Year Residents of Colorado. The Colorado income tax credit for operating a qualified foster care home is available to individuals who operate a foster care home during the period they are Colorado residents that meets all the requirements of the credit statute.~~

~~(3) Qualifications:~~

~~(a) The taxpayer must operate the foster care home as defined in Section 26-6-102(4.5), C.R.S. for a child under the age of 18. The taxpayer may not be related to the individual with the exception of relative care.~~

~~(b) The taxpayer must have provided 24-hour family care in the foster home in Colorado for at least 180 days during the taxable year.~~

~~(c) The taxpayer must be a resident of Colorado during the same 180 day period.~~

~~(d) The taxpayer must have incurred nonreimbursed expenses in connection with the operation of the foster care home during the taxable year.~~

~~(e) The taxpayer must be identified by the Colorado Department of Human Services as the individual responsible for the operation of the foster care home.~~

Notice of Proposed Rulemaking

Tracking number

2015-00326

Department

200 - Department of Revenue

Agency

201 - Taxpayer Service Division - Tax Group

CCR number

1 CCR 201-2

Rule title

INCOME TAX

Rulemaking Hearing

Date

07/01/2015

Time

09:00 AM

Location

1375 Sherman St., Room 127, Denver, CO 80261

Subjects and issues involved

HEALTH CARE PROFESSIONAL CREDIT

Statutory authority

39-21-112(1), and 39-22-126, C.R.S.

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~~HEALTH CARE PROFESSIONAL CREDIT.~~

~~REGULATION 39-22-126.~~

~~(1) The credit for student loans of health care professionals is available only in those tax years in which state revenues exceed limitations on state fiscal year spending by amounts established in 39-22-126(9), C.R.S. In October or November of each year, the State will certify whether there are sufficient excess revenues to make this credit available. See Regulation 39-22-120 for years in which the credit is available.~~

~~(2) The amount of the credit is the smaller of:~~

~~(a) One-third of the sum of the balance due on the loan(s) as of the beginning of the first income tax year for which the credit is claimed, or~~

~~(b) The total of the taxpayer's Colorado income tax plus Colorado alternative minimum tax liability, if any, for the year.~~

~~(3) The health care professional credit is limited to the amount of the taxpayer's income tax liability (i.e., the tax liability before any credits are applied). See, 39-22-126(3), C.R.S. If other income tax credits reduce the income tax liability to an amount smaller than the amount of the health care professional credit (calculated in subparagraph (b), above), then that amount of the health care professional credit that is greater than the net income tax liability (as reduced by the other credit(s)) will be refunded.~~

~~(4) Certification forms issued annually by the Department of Public Health and Environment must be attached to the income tax return for each year the credit is claimed, and for returns filed after January 1, 2002 the form must identify the loan(s) and certify the amount of the qualifying loan(s) as of the beginning of the first income tax year for which the credit is claimed.~~

~~(5) Taxpayers who claimed this credit but then move their residence out of, or cease practicing their profession in, a shortage area before the end of their commitment period must repay the entire amount of the total credit claimed. This repayment liability must be reported on, and paid with, the income tax return for the tax year in which the move occurs or their practice ceases, whichever is earlier.~~

~~(6) For income tax years commencing on or after January 1,2000 health care professional means physician, physician assistant, or advanced practice nurse who is licensed or certified as such under the laws of this state. For any income tax year commencing on or after January 1,2001, dentists licensed as such under the laws of this state qualify as health care professionals, and for any income tax year commencing on or after January 1,2002, dental hygienists licensed as such under the laws of this state qualify as health care professionals.~~

Notice of Proposed Rulemaking

Tracking number

2015-00333

Department

200 - Department of Revenue

Agency

201 - Taxpayer Service Division - Tax Group

CCR number

1 CCR 201-4

Rule title

SALES AND USE TAX

Rulemaking Hearing

Date

07/01/2015

Time

09:00 AM

Location

1375 Sherman St., Room 127, Denver, CO 80261

Subjects and issues involved

MANDATORY ELECTRONIC FUNDS TRANSFER

Statutory authority

39-21-112(1), and 39-26-105.5, C.R.S.

Contact information

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MANDATORY ELECTRONIC FUNDS TRANSFER

REGULATION 39-26-105.5

(1) **Qualifications.**

(a) A sales tax licensee who had a Colorado state sales tax liability of more than seventy-five thousand dollars in the previous calendar year must remit all state and state-administered city, county, and special district sales taxes by electronic funds transfer for the following calendar year. State-administered local sales taxes paid by the licensee are not included in the calculation of the seventy-five thousand dollar threshold.

(b) The Department does not collect the sales taxes for home rule municipalities that collect and administer their own sales taxes.

(2) Electronic funds transfer shall be made using standard banking conventions as outlined in the application and agreement for electronic funds transfer between the taxpayer and the Department.

(3) If the vendor fails to pay taxes by electronic funds transfer or is delinquent in filing the tax return, any required schedules, or the payment of tax, other than in unusual circumstances shown to the satisfaction of the Executive Director, the vendor shall not retain this vendor's fee and shall remit to the Executive Director an amount equal to the full amount of the tax due for the filing period. See, 39-26-105(1), C.R.S.

(4) **Undue Hardship.** The Department may grant in cases of undue hardship a yearly waiver from the requirement to remit all sales tax payments by electronic funds transfer. The Department will grant such request if it determines, to the satisfaction of the executive director, that good cause exists. Taxpayers may submit a written request to the Department each year, upon receiving notice from the Department of the requirement to make electronic funds transfer, by sending such written request to:

Colorado Department of Revenue
Excise Unit, Room 237,
PO Box 17087,
Denver, CO 80217-00873

(a) Undue hardship means excessive or extraordinary hardship. Undue hardship will be determined on a case-by-case basis, will be fact-specific, and will be limited to the information provided by the taxpayer. Undue hardship cannot be established by general and conclusory statements or on a general distrust of information technology such as the Internet, electronic communications, or the security of information provided by means of electronic transfer. Undue hardship may be demonstrated by the documented general unavailability of the technology and communications systems necessary for electronic filing and electronic payment. Undue hardship may also be demonstrated on the basis of the substantial financial cost to the taxpayer relative to the amount of the tax owed by the taxpayer for the current tax year.

Cross Reference

(1) Necessary Forms, Department Publication DRP-5782, "Electronic Funds Transfer (EFT) Program for Tax Payments" describing the electronic funds transfer program, and Form DR-5785, "Authorization For Electronic Funds Transfer (EFT) For Tax Payments," can be found at

www.colorado.goc/revenue/tax > Forms > Forms by Number. These forms must be completed for authorization to use electronic funds transfer.

MANDATORY ELECTRONIC FUNDS TRANSFER

REGULATION 39-26-105.5

(1) **Qualifications.**

(a) A sales tax licensee who had a Colorado state sales tax liability of more than seventy-five thousand dollars in the previous calendar year must remit all state and state-administered city, county, and special district sales taxes by electronic funds transfer for the following calendar year. State-administered local sales taxes paid by the licensee are not included in the calculation of the seventy-five thousand dollar threshold.

(b) The Department does not collect the sales taxes for home rule municipalities that collect and administer their own sales taxes.

(2) Electronic funds transfer shall be made using standard banking conventions as outlined in the application and agreement for electronic funds transfer between the taxpayer and the Department.

(3) If the vendor fails to pay taxes by electronic funds transfer or is delinquent in filing the tax return, any required schedules, or the payment of tax, other than in unusual circumstances shown to the satisfaction of the Executive Director, the vendor shall not retain this vendor's fee and shall remit to the Executive Director an amount equal to the full amount of the tax due for the filing period. See, 39-26-105(1), C.R.S.

(4) **Undue Hardship.** The Department may grant in cases of undue hardship a yearly waiver from the requirement to remit all sales tax payments by electronic funds transfer. The Department will grant such request if it determines, to the satisfaction of the executive director, that good cause exists. Taxpayers may submit a written request to the Department each year, upon receiving notice from the Department of the requirement to make electronic funds transfer, by sending such written request to:

Colorado Department of Revenue
Excise Unit, Room 237,
PO Box 17087,
Denver, CO 80217-00873

(a) Undue hardship means excessive or extraordinary hardship. Undue hardship will be determined on a case-by-case basis, will be fact-specific, and will be limited to the information provided by the taxpayer. Undue hardship cannot be established by general and conclusory statements or on a general distrust of information technology such as the Internet, electronic communications, or the security of information provided by means of electronic transfer. Undue hardship may be demonstrated by the documented general unavailability of the technology and communications systems necessary for electronic filing and electronic payment. Undue hardship may also be demonstrated on the basis of the substantial financial cost to the taxpayer relative to the amount of the tax owed by the taxpayer for the current tax year.

Cross Reference

(1) Necessary Forms, Department Publication DRP-5782, "Electronic Funds Transfer (EFT) Program for Tax Payments" describing the electronic funds transfer program, and Form DR-5785, "Authorization For Electronic Funds Transfer (EFT) For Tax Payments," can be found at

www.colorado.goc/revenue/tax > Forms > Forms by Number. These forms must be completed for authorization to use electronic funds transfer.

Notice of Proposed Rulemaking

Tracking number

2015-00266

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

07/01/2015

Time

10:00 AM

Location

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

Subjects and issues involved

The following rules and regulations are promulgated to establish criteria for the verification and acceptance of proof of insurance when registering a motor vehicle.

Statutory authority

The statutory bases for this regulation are 42-1-204, 42-3-105(1)(d)(I), 42-3-105(2), 42-3-113(2)(d)(I), 42-3-113(2)(d)(II), 42-3-113(2)(d)(III), 42-3-113(2)(d)(IV), 42-3-113(2)(d)(V), and 42-3-113(3)

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DEPARTMENT OF REVENUE

Division of Motor Vehicles – Title and Registration Sections

1 CCR 204-10

RULE 46. APPLICATION FOR REGISTRATION – PROOF OF INSURANCE

Basis: The statutory bases for this regulation are 42-1-204, 42-3-105(1)(d)(I), 42-3-105(2), 42-3-113(2)(d)(I), 42-3-113(2)(d)(II), 42-3-113(2)(d)(III), 42-3-113(2)(d)(IV), 42-3-113(2)(d)(V), and 42-3-113(3) C.R.S.

Purpose: The following rules and regulations are promulgated to establish criteria for the verification and acceptance of proof of insurance when registering a motor vehicle.

1.0 Definitions

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

1.2 "Registration Agent" means an authorized Low-Power Scooter Registration Agent that is a motor vehicle dealer or used motor vehicle dealer licensed under article 6 of title 42 of the Colorado Revised Statutes that has been approved by the Department to act as an authorized agent of the Department for the purposes of compliance with 42-3-105(4)(a) C.R.S. and collection of fees required for the registration of low-power scooters.

2. 0 Requirements

2.1 The Department shall not register a motor vehicle unless the applicant has a complying motor vehicle insurance policy pursuant to part 6 of article 4 of title 10, C.R.S., or a certificate of self-insurance in full force and effect as required by sections 10-4-619 and 10-4-624, C.R.S.

A. Licensed Motor Vehicle Dealers in Colorado issuing temporary permits pursuant to 42-3-203(3)(a) and (b) C.R.S., shall not issue a temporary permit to an applicant unless the applicant has a current complying motor vehicle insurance policy.

B. Registration agents issuing low-power scooter temporary registrations pursuant to 42-3-105(4)(a), C.R.S. shall not issue the low-power scooter temporary registration unless the applicant has a current complying motor vehicle insurance policy. Registration agents shall collect the Motorist Insurance Identification Database fee upon issuance of the low-power scooter temporary registration pursuant to 42-3-304(18)(d)(I), C.R.S., which shall be distributed to the Department pursuant to Code of Colorado Regulations 1 CCR 204-10 Rule 40. Low-Power Scooter.

2.2 The applicant for a motor vehicle registration shall provide the Department with the proof of insurance certificate or insurance identification card provided to the applicant by the applicant's insurer pursuant to section 10-4-604.5, C.R.S., or shall provide proof of insurance in such other media as listed below.

A. Through electronic verification via the Motorist Insurance Identification Database.

B. Computer printout from insurer.

C. Facsimile of the proof of insurance.

D. Electronic proof of insurance that is not otherwise available to the Department. This may be, but is not limited to, insurer provided electronic image/proof on applicant's cellular phone, lap top, or other portable type of electronic device.

E. If web based services are available, the Department may use applicant's insurer provided web based services for proof of insurance.

F. Electronic mail sent from the applicant's insurer.

G. Insurance card, declaration page, insurance binder or certificate of self-insurance.

2.3 Proof of insurance is acceptable in a name other than the registered owner's name if the vehicle identification number (VIN) on the motor vehicle and VIN on the proof of insurance match. Proof of insurance is not acceptable in any situation where the proof of insurance is in the previous owner's name.

2.4 Acceptable types of insurance policies are:

A. Vehicle Specific – Identifies the vehicle by VIN, year, make and specifies the term of coverage.

B. Commercial – Covers a fleet of vehicles and drivers, identifies the commercial entity and specifies the term of coverage.

C. Self-Insurance – Certificate of Self-Insurance issued by the State Commissioner of Insurance to an owner of twenty-five or more vehicles.

D. Blanket/Operator – Covers the insured driver for any vehicle driven by them, specific vehicle(s) are not listed. Specifies the terms of coverage.

E. Owner/Operator Broad Form – This policy insures any or all vehicles owned by a person or business. The person or business name must show as one of the owners of the vehicle. This policy is not vehicle specific.

2.5 Colorado residents that will not operate their motor vehicle for a period of time or are temporarily residing out of state that are required to retain a Colorado registration shall complete the DR2303 Non-Use of Vehicle or Out-of-State Insurance Affidavit. The DR2303 shall be completed annually upon the renewal of the applicants' motor vehicle.

A. Application for Non-Use must include a current proof of insurance for another vehicle owned by that individual. Applicants without insurance on another vehicle shall maintain insurance on the vehicle that is not being used.

B. Out-of-state applicants shall have proof of valid out-of-state insurance and proof of out-of-state residency (i.e., student identification card, utility bill etc.).

~~2.6 Upon acceptance of the applicants' proof of insurance and registration of the motor vehicle the Department shall collect the Motorist Insurance identification Database fee pursuant to 42-3-304(18)(d)(I), C.R.S.~~

~~A. Farm Trucks shall be required to provide proof of insurance but are exempt from the requirements to pay Motorist Insurance Identification Database fee.~~

Notice of Proposed Rulemaking

Tracking number

2015-00320

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

07/09/2015

Time

02:00 PM

Location

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

Subjects and issues involved

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

Statutory authority

Sections 24-4-103, 42-2-111(1)(b), 42-2-403, 42-2-114.5, 42-2-406 (3-7), and 42-2-407(8), CRS

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

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

Note to the publisher: all other sections of 1 CCR 204-30 Rule 7 (Recodified from 204-12)~~12 (Recodified as 204-30 Rule 7)~~ remain a part of this rule.

A. BASIS, PURPOSE AND STATUTORY AUTHORITY

(1) The Department is authorized to adopt rules and regulations as necessary for the Comm er cial Dr iver's License Program in accor dance wit h sect ions 24-4-103, 42-2-111(1)(b), 42-2-403, 42-2-114.5, 42-2-406 (3-7), and 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.

I. TESTING UNIT REQUIREMENTS

~~*Note to the publisher: paragraphs (1) through (20) remain a part of this section I.*~~

(20~~21~~) A driving tester and a testing unit shall c~~C~~harge fees only in accordance with section 42-2-406, C.R.S. and this rule. A driving tester and a testing unit shall only charge for tests administered.

(a) Except as otherwise provided in paragraph (b) of this subsection (20~~1~~), t~~T~~he maximum total fee,~~s~~ including but not limited to any administrative fee, for ~~the administration of~~administering a CDL Skills Test or retest ~~for~~ to an applicant~~commercial driver s shall not exceed~~is ~~the sum of~~ two hundred twenty- five dollars ($225.00).

(b) The maximum total fee,~~s~~ including but not limited to any administrative fee, for ~~the administration of~~administering a CDL Skills Test or retest to~~skill tests for~~ an ~~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 is~~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).~~

Note to the publisher: paragraphs (1) through (19~~20~~) and paragraphs (21~~22~~) through (23~~24~~) remain a part of this section I~~1~~, and this section I~~1~~ and all other sections of 1 CCR 204-30~~12~~ Rule 7 (Recodified from 204-12)~~(Recodified as 204-30 Rule 7)~~ remain a part of this rule.

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

1 CCR 204-30 Rule 7 (Recodified from 204-12)

Note to the publisher: all other sections of 1 CCR 204-30 Rule 7 (Recodified from 204-12) remain a part of this 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, 42-2-114.5, 42-2-406 (3-7), and 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.

I. TESTING UNIT REQUIREMENTS

(20) A driving tester and a testing unit shall charge fees only in accordance with section 42-2-406, C.R.S. and this rule. A driving tester and a testing unit shall only charge for tests administered.

(a) Except as otherwise provided in paragraph (b) of this subsection (20), the maximum total fee, including but not limited to any administrative fee, for administering a CDL Skills Test or retest to an applicant is two hundred twenty-five dollars ($225.00).

(b) The maximum total fee, including but not limited to any administrative fee, for administering a CDL Skills Test or retest to an 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 is one hundred dollars ($100.00).

Note to the publisher: paragraphs (1) through (19) and paragraphs (21) through (23) remain a part of this section I, and this section I and all other sections of 1 CCR 204-30 Rule 7 (Recodified from 204-12) remain a part of this rule.

Notice of Proposed Rulemaking

Tracking number

2015-00292

Department

200 - Department of Revenue

Agency

206 - Lottery Commission

CCR number

1 CCR 206-1

Rule title

LOTTERY RULES AND REGULATIONS

Rulemaking Hearing

Date

07/08/2015

Time

08:00 AM

Location

720 S Colorado Blvd, Denver CO 80246

Subjects and issues involved

Powerball Add-on Power Play addition of 10X multiplier

Statutory authority

CRS 24-35-208(1)(a) and (2), 24-35-212, 24-35-212.5

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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 becomes effective with sales on October 4, 2015, with the first draw October 7, 2015.

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"

A. 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

B. The "POWER PLAY® OPTION" is an add-on to the “POWERBALL®” 5/69 + 1/26 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® OPTION” 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

A. There will be no change in play for the “POWERBALL®” 5/69 + 1/26 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.

B. The “POWERBALL®” “POWER PLAY® OPTION” drawings shall be held twice each week on Wednesday and Saturday.

C. 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® OPTION" prize amounts for that drawing. If a “POWERBALL®” drawing is not certified, the “POWER PLAY® OPTION” number for the drawing defaults to “5”.

D. "POWER PLAY® OPTION" multiplier of ten (10) is available when the POWERBALL® jackpot level is between forty million dollars ($40,000,000) to one hundred fifty-one million dollars ($151,000,000) inclusive. When the multiplier of ten (10) is available, the multipliers are weighted as follows:

E.

	POWER PLAY "10” (limited availability)	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%

When the POWERBALL® jackpot is greater than one hundred fifty-one million dollars ($151,000,000), the POWERBALL® "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%

F Each "POWER PLAY® OPTION" 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.

G. The drawing shall not be invalidated due to the multiplier drawn creating an excessive prize liability for the Lottery.

H. All "POWER PLAY® OPTION" drawings shall be open to the public.

I. 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.Bof 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	POWER PLAY® “10” Drawn Amounts
Grand Prize	Jackpot	Jackpot	Jackpot	Jackpot	Jackpot	Jackpot
Second Prize	$1,000,000	$ 2,000,000	$ 2,000,000	$ 2,000,000	$ 2,000,000	$ 2,000,000
Third Prize	$10,000	$20,000	$30,000	$40,000	$50,000	$100,000
Fourth Prize	$100	$200	$300	$400	$500	$1,000
Fifth Prize	$100	$200	$300	$400	$500	$1,000
Sixth Prize	$7	$14	$21	$28	$32	$70
Seventh Prize	$7	$14	$21	$28	$32	$70
Eighth Prize	$4	$8	$12	$16	$20	$40
Ninth Prize	$4	$8	$12	$16	$20	$40

B. If the set prizes are pari-mutuel as defined in Paragraph 14.A.6.C.2.c 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. 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. 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 adding the ”POWER PLAY® OPTION” to a “POWERBALL®” 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® Option” Promotion

With the Lottery Commission’s and Director’s approval, the Lottery will from time to time participate in a “POWERBALL®” “POWER PLAY® OPTION” promotion (i.e. a ten times (10X) multiplier for a limited promotion). The times and dates of the “POWERBALL®” “POWER PLAY® OPTION” promotion will be announced by the MUSL board in conjunction with existing rules and regulations pertaining to “POWERBALL®”.

Notice of Proposed Rulemaking

Tracking number

2015-00291

Department

200 - Department of Revenue

Agency

206 - Lottery Commission

CCR number

1 CCR 206-1

Rule title

LOTTERY RULES AND REGULATIONS

Rulemaking Hearing

Date

07/08/2015

Time

08:00 AM

Location

720 S Colorado Blvd, Denver CO 80246

Subjects and issues involved

Colorado Lottery Powerball matrix change

Statutory authority

CRS 24-35-208(1)(a) and (2), 24-35-212, 24-35-212.5

Contact information

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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 becomes effective with sales on October 4, 2015, with the first draw October 7, 2015.

A. 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.

B. 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.

C. 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.

D. 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. "Advance Play" means the ability to purchase tickets for more than one drawing.

B. "Breakage" means the results of rounding prize amounts down to the nearest whole dollar.

C. "Drawing" means the event that occurs wherein the official "POWERBALL®" numbers are drawn.

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~~sixty-nine (~~59~~69) squares numbered one (1) through ~~fifty~~sixty-nine (~~59~~69) and the second grid containing thirty-five (35) squares, numbered one (1) through ~~thirty-five~~twenty-six (~~35~~26).

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. "Grid" means the area of a play slip that contains a set of numbered squares to be marked by the player.

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. "MUSL" means the Multi-State Lottery Association, a government-benefit association wholly owned and operated by the Party Lotteries.

I. "MUSL Board" means the governing body of MUSL, which is comprised of the chief executive officer of each Party Lottery.

J. "Number" means any play integer from one (1) through ~~fifty~~sixty-nine (~~59~~69) inclusive.

K. "Play" means the six (6) numbers selected on each Board and printed on the ticket.

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. "Prize Amount" means the pari-mutuel and/or set prize values established for a game.

N. "Prize Category" means and refers to a specific prize within the prize pool.

O. "Prize Pool" means a defined percentage of sales as specified in this rule.

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. "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. "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. "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. "Share(s)" means the total number of matching combinations within each prize category as determined for each drawing.

U. "Winning Numbers" means the six (6) numbers, the first five (5) from a field of ~~fifty~~sixty-nine (~~59~~69) numbers and the last one (1) from a separate field of ~~thirty-five~~twenty-six (~~35~~26) 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. "POWERBALL®" tickets may be purchased only from a Lottery licensee authorized by the Director to sell multi-state Jackpot Game tickets.

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. Plays may be entered manually using the Jackpot Game terminal by a ticket generation option ~~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. 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 "POWERBALL®" player must select six numbers in each play, five (5) numbers out of ~~fifty~~sixtyy-nine (~~59~~69) plus one (1) out of ~~thirty-five~~twenty-six (~~35~~26). 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. 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	PRIZECATEGORY	ODDS OF WINNING

		(ONE PLAY)
All five (5) of first set plus one (1) of second set	Grand Prize	1:~~175,223,510~~292,201,338.0000
All five (5) of first set plus none of second set	Second Prize	1:~~5,153,632.6471~~11,668,053.5200
Any four (4) of first set, but not five, plus one (1) of second set	Third Prize	1:~~648,975.9630~~913,129.1813
Any four (4) of first set, but not five, plus none of second set	Fourth Prize	1:~~19,078.5283~~36,525.1673
Any three (3) of first set, but not four or five, plus one (1) of second set	Fifth Prize	1:~~12,244.8295~~14,494.1140
Any three (3) of first set, but not four or five, plus none of second set	Sixth Prize	1:~~360.1420~~579.7646
Any two (2) of first set, but not three, four or five, plus one (1) of second set	Seventh Prize	1:~~706.4325~~701.3281
Any one (1) of first set, but not two, three, four or five, plus one (1) of second set	Eighth Prize	1:~~110.8129~~91.9775
None of first set plus one (1) of second set	Ninth Prize	1:~~55.4065~~38.2339
Overall odds of winning any prize		1:~~31.8464~~24.8671

B. 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~~68.0132%	~~31.9756~~34.0066 %
Second Prize	$1,000,000	~~19.403~~88.5558%	~~9.701~~94.2279%
Third Prize	$10,000	~~1.540~~85.4756%	~~0.770~~42.7378%
Fourth Prize	$100	0.~~524~~2738%	0.~~2620~~1369%
Fifth Prize	$100	0.~~8166~~6900%	0.~~4083~~3450%
Sixth Prize	$7	1.~~9436~~2074%	0.~~9718~~6037%
Seventh Prize	$7	0.~~9908~~9982%	0.~~4954~~4991%
Eighth Prize	$4	~~3.609~~64.3488%	~~1.804~~82.1744%
Ninth Prize	$4	~~7.219~~410.4374%	~~3.609~~75.2187%
TOTAL		100.00%	50.00%

C. Prize Categories - The Grand Prize shall be determined on a pari-mutuel basis. Except as provided in c. 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:

   a. The amount available in the set prize payout variance account.

   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.

   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. 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. When ~~the~~ aL~~l~~ottery becomes a member of the POWERBALL® product group, the MUSL Board determines an initial contribution to be made by the ~~Lottery~~ lottery to the foregoing reserves. In accordance with the payment plan established between the ~~Lottery~~ lottery and MUSL, the ~~Lottery~~ lottery must deposit with the MUSL board the specified amounts.

C. 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 ~~31.975~~34.0066% of sales to no less than ~~29.975~~32.0066% 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. 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. 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.

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. 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.

C. 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.

D. 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.

E. 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.

F. 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.

G. 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. 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. 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. 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. 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. 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. The Grand Prize amount held by MUSL for subsequent payment to annuity winners shall be transferred to the Lottery within seven days preceding 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. 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. 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. 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. The drawing shall not be invalidated due to the numbers drawn creating an excessive prize liability for the Lottery.

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. 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. 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. 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. 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:

a. A licensee must have sold a grand-prize 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;

b. Payment of the jackpot-selling bonus will occur once Lottery security has confirmed the selling licensee.

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.

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:

a. A licensee must be licensed on the date the marketing performance bonus is declared;

b. A licensee must sell Lottery products up to and including on the final sales day in which the marketing performance bonus is declared;

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. In the event there is a residual resulting from the accrual of the one percent (1%) cashing bonus (14.A.14.A.1) and/or the five-tenths of one percent (.5%) marketing bonus (14.A.14.A.3) have been expensed, the Lottery Director may provide additional compensation to licensees as described in 14.A.14.A.2 or may revert the excess amount thereby decreasing the bonus expense.

Notice of Proposed Rulemaking

Tracking number

2015-00330

Department

400 - Department of Natural Resources

Agency

404 - Oil and Gas Conservation Commission

CCR number

2 CCR 404-1

Rule title

PRACTICE AND PROCEDURE

Rulemaking Hearing

Date

07/20/2015

Time

09:00 AM

Location

Colorado Oil and Gas Conservation Commission, 1120 Lincoln Street, Suite 801, Denver, CO 80203

Subjects and issues involved

The purpose of the rulemaking is to address legal concerns regarding a complainants right to request a Commission hearing to review the Directors resolution of a complaint.

Statutory authority

§§ 34-60-105(1), 34-60-108, and 34-60-106(15), C.R.S.

Contact information

Name

Julie Murphy

Title

Hearings and Regulatory Affairs Manager

Telephone

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Email

julie.murphy@state.co.us

100 Series

Petition for Review shall mean the written request filed by a Complainant for Commission review of the terms of a final proposed Administrative Order by Consent pursuant to Rule 522.b.(4).

500 Series

503. ALL OTHER PROCEEDINGS COMMENCED BY FILING AN APPLICATION

a. All proceedings other than those initiated by the Commission ~~or~~, a variance ~~requests~~request submitted ~~for~~to the Director ~~approval~~, or a Petition for Review shall be commenced by filing with the Commission the original, two hard copies, and an electronic copy of a typewritten or printed ~~petition which shall be titled~~ "application." The application shall also be submitted on compatible electronic media. All operators' applications should include the operator's identification number. The application shall set forth in reasonable detail the relief requested and the legal and factual grounds for such relief. The original of the application shall be executed by a person with authority to do so on behalf of the applicant, and the contents thereof shall be verified by a party with sufficient knowledge to confirm the facts contained therein. With the exception of those from state and local government agencies, each application shall be accompanied by a docket fee established by the Commission (see Appendix III), except applications seeking an order finding violation or an emergency order.

b. Applications to the Commission may be filed by the following applicants:

(1) For purposes of applications for the creation of drilling units, applications for additional wells within existing drilling units, other applications for modifications to existing drilling unit orders, or applications for exceptions to Rule 318., only those owners within the proposed drilling unit, or within the existing drilling unit to be affected by the application, may be applicants.

(2) For purposes of applications for involuntary pooling orders made pursuant to §34-60-116, C.R.S., only those persons who own an interest in the mineral estate of the tracts to be pooled may be applicants.

(3) For purposes of applications for unitization made pursuant to §34-60-118, C.R.S., only those persons who own an interest in the mineral estate underlying the tract or tracts to be unitized may be applicants.

(4) For purposes of seeking an order finding violation, only the Director ~~or a party who made a complaint under Rule 522.~~ may be an applicant.

(5) For purposes of seeking a variance from the Commission, only the operator, mineral owner, surface owner or tenant of the lands which will be affected by such variance, other state agencies, any local government within whose jurisdiction the affected operation is located, or any person who may be directly and adversely affected or aggrieved if such variance is not granted, may be an applicant.

(6) For purposes of seeking a hearing pursuant to Rules 216.f.(4), 303.c.(2), or 303.j.(2), the operator seeking approval of the Application for Permit-to-Drill, Form 2, or an Oil and Gas Location Assessment, Form 2A, may be the applicant.

(7) For purposes of seeking a hearing on approval of an Application for Permit-to-Drill, Form 2, or an Oil and Gas Location Assessment, Form 2A, under Rule 305.e.(2), any of the following may be the applicant:

A. The operator;

B. The surface owner, solely to raise alleged noncompliance with Commission rules or statute, or to allege potential adverse impacts to public health, safety, and welfare, including the environment and wildlife resources, that are within the Commission's jurisdiction to remedy; and

C. The relevant local government, provided that the hearing shall be conducted in similar fashion as is specified in Rules 508.j, 508.k, and 508.l with respect to a public issues hearing. It shall be the burden of the local government to bring forward evidence sufficient for the Commission to make the preliminary findings specified in Rule 508.j at the outset of such hearing.

(8) For purposes of seeking a hearing on provisions related to measurement pursuant to Rule 328 or 329, the mineral interest owner may be the applicant.

(9) For purposes of seeking a hearing for an order limiting surface density pursuant to Rule 1202.d.(5), the operator shall be the applicant.

(10) For purposes of seeking relief or a ruling from the Commission on any other matter not described in (1) through (~~9~~10) above, only persons who can demonstrate that they are directly and adversely affected or aggrieved by the conduct of oil and gas operations or an order of the Commission and that their interest is entitled to legal protection under the Act may be an applicant.

* * *

522. PROCEDURES FOR ALLEGED VIOLATIONS

* * *

b. Complainant's Rights and Responsibilities

(1) The following persons (Complainant) may make a complaint to the Director requesting that an NOAV be issued:

A. The mineral owner;

B. The surface owner or tenant of the lands upon which the alleged violation occurred;

C. Other state agencies;

D. The local government with jurisdiction over the lands upon which the alleged violation took place; or

E. Any person who may be directly and adversely affected or aggrieved as a result of the alleged violation~~.~~ and whose interest is entitled to legal protection under the Act.

(2) The Director will investigate all complaints made pursuant to Rule 522.b.(1) to determine whether reasonable cause for an alleged violation exists. The Director will notify the Complainant of the determination pursuant to Rule 521.

A. If the Director determines no violation occurred, no further action will be taken by the Director. The Director's decision that reasonable cause for an alleged violation does not exist is not reviewable by a Complainant, except as provided by section 34-60-114, C.R.S.

B. If the Director determines a violation may have occurred, the Director may resolve the matter without seeking penalties pursuant to subpart 522.c.(1) or initiate an enforcement action seeking penalties pursuant to subpart 522.d.

(3) If a complaint leads to issuance of an NOAV, a Complainant who has filed a written complaint on a Form 18, Complaint Report, will be given 14 days to comment on the terms of a draft proposed settlement of the NOAV, if any, pursuant to subpart 522.e.(1).

~~(4) A Complainant who has filed a written complaint on a Form 18, Complaint Report, may apply for an Order Finding Violation (OFV) hearing before the Commission pursuant to Rule 503 to hear the Complainant's objections to:~~

~~A. The Director's decision not to issue an NOAV for an alleged violation specifically identified in the written complaint; or~~ (4) A Complainant who objects to the terms of

~~B. The settlement terms in~~ a final proposed Administrative Order by Consent (AOC) settling an alleged violation arising directly from the Complainant's written complaint~~.~~ may file a Petition for Review with the Commission.

~~(5) Complainants must file an application~~A. In considering a Petition for ~~an OFV hearing with~~Review, the standard of review is abuse of discretion.

B. ~~Commission~~ A Petition for Review will set forth in reasonable detail the legal arguments and facts the Complainant contends demonstrate the terms of a final AOC proposed by the Director constitute an abuse of discretion.

C. A Petition for Review must be filed within 28 days of notification of the ~~Director's decision not to issue an NOAV or of the~~ settlement terms in a final proposed AOC. ~~Applications~~Petitions filed later than 28 days following notification will not be ~~heard~~considered.

~~(6) The~~D. A Complainant must serve its ~~OFV hearing application~~Petition for Review on the ~~alleged violator~~operator pursuant to Rule 521 within 7 days ~~of the~~following filing of the ~~application.~~ Petition.

~~(7)~~E. The ~~Complainant bears~~operator and the ~~burden~~ Director may file a response within 21 days after receipt of ~~proof an OFV~~a Petition for Review.

(5) The Commission will consider a Petition for Review at the next regularly scheduled hearing ~~initiated by~~not less than 30 days following filing of the Petition for Review.

A. No party to the Petition for Review hearing may present evidence or information that was not presented to the Director for consideration during negotiation of the proposed final AOC.

B. It is the Complainant's burden to show the proposed settlement terms in the AOC constitute an abuse of discretion.

i. If the Complainant meets this burden, the Commission may remand the matter to the Director for further proceedings, set

the matter for an Order Finding Violation Hearing, or order other such relief it deems just and reasonable.

ii. If the Complainant fails to meet this burden, the Commission will deny the Petition for Review, and will act on the final proposed AOC pursuant to Rules 522.e.(1)C and D.

C. The Commission's consideration of a Petition for Review will proceed as follows:

i. Determination if any Commissioner has a conflict;

ii. Introduction and background by Staff;

iii. Presentation by the Complainant regarding its threshold burden;

iv. Response by the operator, if any;

v. Response by Staff, if any;

vi. Rebuttal by the Complainant, if any; and

vii. Commission determination regarding whether the Complainant has met its burden of persuasion.

* * *

e. Resolution of Enforcement Actions

(1) Administrative Order by Consent

An enforcement action may be provisionally resolved by agreement between the operator and the Director except as provided in subpart 522.e.(2).

A. A proposed agreement to resolve an enforcement action will be memorialized in an Administrative Order by Consent (AOC) executed by the Director and the operator. An AOC will be noticed for review and approval by the Commission unless no penalties are recommended.

B. A Complainant who has filed a written complaint on a Form 18, Complaint Report, will be informed of the terms of a draft proposed AOC resolving alleged violations arising directly out of their written complaint and will be given 14 days to comment on the draft settlement terms before the AOC is finalized and presented to the Commission for approval. A Complainant who objects to the finalized settlement terms proposed for an alleged violation arising

directly from their written complaint may file ~~an application~~a Petition for ~~a hearing~~Review pursuant to Rule 522.b.(4), within 28 days of the Complainant receiving the finalized settlement terms of a proposed AOC.

C. Administrative Orders by Consent that are not subject to a pending Complainant's Petition for Review will be docketed on the Commission's consent agenda and may be approved by motion without formal hearing. An approved AOC becomes a final order of the Commission subject to judicial review.

D. If the Commission does not approve an AOC, the Commission will remand the matter to the Director for further proceedings.

(2) Order Finding Violation

A. An enforcement action may not be resolved by the Director and must be heard by the Commission when:

i. The Director alleges the operator is responsible for gross negligence or knowing and willful misconduct that resulted in an egregious violation;

ii. The Director alleges the operator has engaged in a pattern of violations; or

iii. ~~A Complainant files a timely application for~~When the Commission sets an OFV hearing pursuant to ~~Rule~~ 522.b.(~~4).~~ 5)B.i.

B. Commencing an OFV hearing

i. The Director will commence an OFV hearing for enforcement actions governed by subpart 522.e.(2)A. by filing an Notice and Application for Mandatory OFV Hearing.

ii. Order Finding Violation hearings for enforcement actions not governed by subpart 522.e.(2)A. are commenced by service of the NOAV and Notice and Application for Hearing. The Director is not required to file a separate application for an OFV hearing. An OFV hearing will commence on the date stated in the Notice and Application for Hearing, as amended by applicable pre-hearing orders, unless the parties have agreed to and executed an AOC not less than 7 days prior to the scheduled hearing date.

iii. ~~A Complainant may file an application for an OFV hearing pursuant to Rule 522.b.(4).~~

~~iv.~~ The Commission may conduct an OFV hearing on its own motion, with notice pursuant to Rule 507, if it believes the Director has failed to enforce a provision of the Act, or a Commission rule, order, or permit.

C. OFV hearing procedures

i. OFV prehearing procedures are governed by Rule 527. The Director may convene a prehearing conference pursuant to Rule 527 within a reasonable time after serving a Notice and Application for Hearing.

ii. ~~-~~OFV hearings are *de novo* proceedings governed by Rule 528.

iii. If the Director initiates the OFV hearing, a Complainant may ~~participate as a non-party observer and may~~ submit a Rule 510 statement~~,~~ or ~~may~~ move to intervene by permission of the Commission pursuant to Rule 509.

~~iv. If a Complainant initiates an OFV hearing pursuant to Rule 522.b.(4), the Director may intervene as a matter of right~~a.(2)C.

(3) Rescinding an NOAV

If, after issuance of an NOAV to an operator, the Director no longer has reasonable cause to believe a violation of the Act, or of any Commission rule, order, or permit occurred, the Director will rescind the NOAV in writing.

* * *

528. CONDUCT OF ADJUDICATORY HEARINGS.

* * *

c. **Enforcement hearings.** In order to assure that all parties ~~against whom a fine or penalty may be imposed~~ are afforded due process of law, the Commission ~~shall, at any hearing,~~will permit ~~the Director or the complainant pursuant~~all parties to ~~Rule 522.b.(4)~~an enforcement hearing to present evidence and argument, and to conduct cross-examination ~~required for a full disclosure of the facts~~. The enforcement matter shall be heard by the Commission de novo unless the operator waives its right to a de novo hearing prior to or at the Commission hearing. The order of presentation in a hearing for an enforcement matter shall be as follows, unless otherwise established by the Commission at the hearing:

(1) Determination of whether any Commission members have a conflict of interest;

(2) Opening statements by all parties;

(3) Presentation by the Director;

~~(4) Presentation by any complainant under Rule 522.b.(4);~~

~~(5)~~(4) Presentation by the operator;

~~(6)~~(5) Rebuttal by the Director;

~~(7)~~(6) Rebuttal by the ~~respondent~~operator;

~~(8)~~(7) Closing statements ~~by the parties~~;

~~(9)~~(8) Finding regarding existence of violation;

~~(10)~~(9) If the Commission first determines by a preponderance of the evidence that a violation or violations exist, presentation by the Director of any recommended fine or permit-related penalty, and/or recommended corrective action/abatement to be taken by the operator;

~~(11) Response by any complainant under Rule 522.b.(4);~~

~~(12)~~(10) Presentation of statements under Rule 510, if any;

~~(13)~~(11) Response by the operator;

~~(14)~~(12) Rebuttal by the Director;

~~(15)~~(13) Closing statements ~~by all parties~~;

~~(16)~~(14) Closing of the record.

* * *

100 Series

Petition for Review shall mean the written request filed by a Complainant for Commission review of the terms of a final proposed Administrative Order by Consent pursuant to Rule 522.b.(4).

500 Series

503. ALL OTHER PROCEEDINGS COMMENCED BY FILING AN APPLICATION

a. All proceedings other than those initiated by the Commission, a variance request submitted to the Director, or a Petition for Review shall be commenced by filing with the Commission the original, two hard copies, and an electronic copy of a typewritten or printed "application." The application shall also be submitted on compatible electronic media. All operators' applications should include the operator's identification number. The application shall set forth in reasonable detail the relief requested and the legal and factual grounds for such relief. The original of the application shall be executed by a person with authority to do so on behalf of the applicant, and the contents thereof shall be verified by a party with sufficient knowledge to confirm the facts contained therein. With the exception of those from state and local government agencies, each application shall be accompanied by a docket fee established by the Commission (see Appendix III), except applications seeking an order finding violation or an emergency order.

b. Applications to the Commission may be filed by the following applicants:

(1) For purposes of applications for the creation of drilling units, applications for additional wells within existing drilling units, other applications for modifications to existing drilling unit orders, or applications for exceptions to Rule 318., only those owners within the proposed drilling unit, or within the existing drilling unit to be affected by the application, may be applicants.

(2) For purposes of applications for involuntary pooling orders made pursuant to §34-60-116, C.R.S., only those persons who own an interest in the mineral estate of the tracts to be pooled may be applicants.

(3) For purposes of applications for unitization made pursuant to §34-60-118, C.R.S., only those persons who own an interest in the mineral estate underlying the tract or tracts to be unitized may be applicants.

(4) For purposes of seeking an order finding violation, only the Director may be an applicant.

(5) For purposes of seeking a variance from the Commission, only the

operator, mineral owner, surface owner or tenant of the lands which will be affected by such variance, other state agencies, any local government within whose jurisdiction the affected operation is located, or any person who may be directly and adversely affected or aggrieved if such variance is not granted, may be an applicant.

(6) For purposes of seeking a hearing pursuant to Rules 216.f.(4), 303.c.(2), or 303.j.(2), the operator seeking approval of the Application for Permit-to-Drill, Form 2, or an Oil and Gas Location Assessment, Form 2A, may be the applicant.

(7) For purposes of seeking a hearing on approval of an Application for Permit-to-Drill, Form 2, or an Oil and Gas Location Assessment, Form 2A, under Rule 305.e.(2), any of the following may be the applicant:

A. The operator;

B. The surface owner, solely to raise alleged noncompliance with Commission rules or statute, or to allege potential adverse impacts to public health, safety, and welfare, including the environment and wildlife resources, that are within the Commission's jurisdiction to remedy; and

C. The relevant local government, provided that the hearing shall be conducted in similar fashion as is specified in Rules 508.j, 508.k, and 508.l with respect to a public issues hearing. It shall be the burden of the local government to bring forward evidence sufficient for the Commission to make the preliminary findings specified in Rule 508.j at the outset of such hearing.

(8) For purposes of seeking a hearing on provisions related to measurement pursuant to Rule 328 or 329, the mineral interest owner may be the applicant.

(9) For purposes of seeking a hearing for an order limiting surface density pursuant to Rule 1202.d.(5), the operator shall be the applicant.

(10) For purposes of seeking relief or a ruling from the Commission on any other matter not described in (1) through (10) above, only persons who can demonstrate that they are directly and adversely affected or aggrieved by the conduct of oil and gas operations or an order of the Commission and that their interest is entitled to legal protection under the Act may be an applicant.

*** * ***

522. PROCEDURES FOR ALLEGED VIOLATIONS

* * *

b. Complainant's Rights and Responsibilities

(1) The following persons (Complainant) may make a complaint to the Director requesting that an NOAV be issued:

A. The mineral owner;

B. The surface owner or tenant of the lands upon which the alleged violation occurred;

C. Other state agencies;

D. The local government with jurisdiction over the lands upon which the alleged violation took place; or

E. Any person who may be directly and adversely affected or aggrieved as a result of the alleged violation and whose interest is entitled to legal protection under the Act.

(2) The Director will investigate all complaints made pursuant to Rule 522.b.(1) to determine whether reasonable cause for an alleged violation exists. The Director will notify the Complainant of the determination pursuant to Rule 521.

A. If the Director determines no violation occurred, no further action will be taken by the Director. The Director's decision that reasonable cause for an alleged violation does not exist is not reviewable by a Complainant, except as provided by section 34-60-114, C.R.S.

B. If the Director determines a violation may have occurred, the Director may resolve the matter without seeking penalties pursuant to subpart 522.c.(1) or initiate an enforcement action seeking penalties pursuant to subpart 522.d.

(3) If a complaint leads to issuance of an NOAV, a Complainant who has filed a written complaint on a Form 18, Complaint Report, will be given 14 days to comment on the terms of a draft proposed settlement of the NOAV, if any, pursuant to subpart 522.e.(1).

(4) A Complainant who objects to the terms of a final proposed Administrative Order by Consent (AOC) settling an alleged violation arising directly from

the Complainant's written complaint may file a Petition for Review with the Commission.

A. In considering a Petition for Review, the standard of review is abuse of discretion.

B. A Petition for Review will set forth in reasonable detail the legal arguments and facts the Complainant contends demonstrate the terms of a final AOC proposed by the Director constitute an abuse of discretion.

C. A Petition for Review must be filed within 28 days of notification of the settlement terms in a final proposed AOC. Petitions filed later than 28 days following notification will not be considered.

D. A Complainant must serve its Petition for Review on the operator pursuant to Rule 521 within 7 days following filing of the Petition.

E. The operator and the Director may file a response within 21 days after receipt of a Petition for Review.

(5) The Commission will consider a Petition for Review at the next regularly scheduled hearing not less than 30 days following filing of the Petition for Review.

A. No party to the Petition for Review hearing may present evidence or information that was not presented to the Director for consideration during negotiation of the proposed final AOC.

B. It is the Complainant's burden to show the proposed settlement terms in the AOC constitute an abuse of discretion.

i. If the Complainant meets this burden, the Commission may remand the matter to the Director for further proceedings, set the matter for an Order Finding Violation Hearing, or order other such relief it deems just and reasonable.

ii. If the Complainant fails to meet this burden, the Commission will deny the Petition for Review, and will act on the final proposed AOC pursuant to Rules 522.e.(1)C and D.

C. The Commission's consideration of a Petition for Review will proceed as follows:

i. Determination if any Commissioner has a conflict;

ii. Introduction and background by Staff;

iii. Presentation by the Complainant regarding its threshold burden;

iv. Response by the operator, if any;

v. Response by Staff, if any;

vi. Rebuttal by the Complainant, if any; and

vii. Commission determination regarding whether the Complainant has met its burden of persuasion.

* * *

e. Resolution of Enforcement Actions

(1) Administrative Order by Consent

An enforcement action may be provisionally resolved by agreement between the operator and the Director except as provided in subpart 522.e.(2).

A. A proposed agreement to resolve an enforcement action will be memorialized in an Administrative Order by Consent (AOC) executed by the Director and the operator. An AOC will be noticed for review and approval by the Commission unless no penalties are recommended.

B. A Complainant who has filed a written complaint on a Form 18, Complaint Report, will be informed of the terms of a draft proposed AOC resolving alleged violations arising directly out of their written complaint and will be given 14 days to comment on the draft settlement terms before the AOC is finalized and presented to the Commission for approval. A Complainant who objects to the finalized settlement terms proposed for an alleged violation arising directly from their written complaint may file a Petition for Review pursuant to Rule 522.b.(4), within 28 days of the Complainant receiving the finalized settlement terms of a proposed AOC.

C. Administrative Orders by Consent that are not subject to a pending Complainant's Petition for Review will be docketed on the Commission's consent agenda and may be approved by motion without formal hearing. An approved AOC becomes a final order of the Commission subject to judicial review.

D. If the Commission does not approve an AOC, the Commission will remand the matter to the Director for further proceedings.

(2) Order Finding Violation

A. An enforcement action may not be resolved by the Director and must be heard by the Commission when:

i. The Director alleges the operator is responsible for gross negligence or knowing and willful misconduct that resulted in an egregious violation;

ii. The Director alleges the operator has engaged in a pattern of violations; or

iii. When the Commission sets an OFV hearing pursuant to 522.b.(5)B.i.

B. Commencing an OFV hearing

i. The Director will commence an OFV hearing for enforcement actions governed by subpart 522.e.(2)A. by filing an Notice and Application for Mandatory OFV Hearing.

ii. Order Finding Violation hearings for enforcement actions not governed by subpart 522.e.(2)A. are commenced by service of the NOAV and Notice and Application for Hearing. The Director is not required to file a separate application for an OFV hearing. An OFV hearing will commence on the date stated in the Notice and Application for Hearing, as amended by applicable pre-hearing orders, unless the parties have agreed to and executed an AOC not less than 7 days prior to the scheduled hearing date.

iii. The Commission may conduct an OFV hearing on its own motion, with notice pursuant to Rule 507, if it believes the Director has failed to enforce a provision of the Act, or a Commission rule, order, or permit.

C. OFV hearing procedures

i. OFV prehearing procedures are governed by Rule 527. The Director may convene a prehearing conference pursuant to Rule 527 within a reasonable time after serving a Notice and Application for Hearing.

ii. OFV hearings are *de novo* proceedings governed by Rule 528.

iii. If the Director initiates the OFV hearing, a Complainant may submit a Rule 510 statement or move to intervene by permission of the Commission pursuant to Rule 509.a.(2)C.

(3) Rescinding an NOAV

If, after issuance of an NOAV to an operator, the Director no longer has reasonable cause to believe a violation of the Act, or of any Commission rule, order, or permit occurred, the Director will rescind the NOAV in writing.

* * *

528. CONDUCT OF ADJUDICATORY HEARINGS.

* * *

c. **Enforcement hearings.** In order to assure that all parties are afforded due process of law, the Commission will permit all parties to an enforcement hearing to present evidence and argument, and to conduct cross-examination. The enforcement matter shall be heard by the Commission de novo unless the operator waives its right to a de novo hearing prior to or at the Commission hearing. The order of presentation in a hearing for an enforcement matter shall be as follows, unless otherwise established by the Commission at the hearing:

(1) Determination of whether any Commission members have a conflict of interest;

(2) Opening statements by all parties;

(3) Presentation by the Director;

(4) Presentation by the operator;

(5) Rebuttal by the Director;

(6) Rebuttal by the operator;

(7) Closing statements;

(8) Finding regarding existence of violation;

(9) If the Commission first determines by a preponderance of the evidence that a violation or violations exist, presentation by the Director of any recommended fine or permit-related penalty, and/or recommended corrective action/abatement to be taken by the operator;

(10) Presentation of statements under Rule 510, if any;

(11) Response by the operator;

(12) Rebuttal by the Director;

(13) Closing statements;

(14) Closing of the record.

*** * ***

Notice of Proposed Rulemaking

Tracking number

2015-00323

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

07/09/2015

Time

08:00 AM

Location

Holiday Inn and Suites, 1129 North Summit Boulevard, Frisco, CO 80443

Subjects and issues involved

CHAPTER P-1 - PARKS AND OUTDOOR RECREATION LANDS

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

May 29, 2015

RULE-MAKING NOTICE
PARKS AND WILDLIFE COMMISSION MEETING
July 9-10, 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 **July 9-10, 2015. The Parks and Wildlife Commission meeting will be held at the Holiday Inn and Suites, 1129 North Summit Boulevard, Frisco, CO 80443. 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 - **July 9-10, 2015** beginning **at 8:00 a.m.**

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FINAL REGULATIONS

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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-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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- Removal of the porcupine from Chapter W-3, adding it to Regulation No. W-1000(A)(5).

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PARKS REGULATIONS

DRAFT REGULATIONS:

Chapter P- 8- "Aquatic Nuisance Species" 2 CCR 405-8

Open for review of regulations in accordance with Executive Order D 2012-002 ("Regulatory Efficiency Reviews") to determine if they should be continued in their current form, modified or repealed.

ISSUES IDENTIFICATION:

Chapter P-7 - "Passes, Permits and Registrations" 2 CCR 405-7

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Notice of Proposed Rulemaking

Tracking number

2015-00324

Department

400 - Department of Natural Resources

Agency

405 - Colorado Parks and Wildlife (405 Series, Parks)

CCR number

2 CCR 405-7

Rule title

CHAPTER P-7 - PASSES, PERMITS AND REGISTRATIONS

Rulemaking Hearing

Date

07/09/2015

Time

08:00 AM

Location

Holiday Inn and Suites, 1129 North Summit Boulevard, Frisco, CO 80443

Subjects and issues involved

CHAPTER P-7 - PASSES, PERMITS AND REGISTRATIONS - See Attached

Statutory authority

see attached

Contact information

Name

Danielle Isenhart

Title

Regulations Manager

Telephone

303-866-3203 x 4625

Email

danielle.isenhart@state.co.us

May 29, 2015

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Notice of Proposed Rulemaking

Tracking number

2015-00315

Department

400 - Department of Natural Resources

Agency

405 - Colorado Parks and Wildlife (405 Series, Parks)

CCR number

2 CCR 405-8

Rule title

CHAPTER P-8 - AQUATIC NUISANCE SPECIES (ANS)

Rulemaking Hearing

Date

07/09/2015

Time

08:00 AM

Location

Holiday Inn and Suites, 1129 North Summit Boulevard, Frisco, CO 80443

Subjects and issues involved

CHAPTER P-8 - AQUATIC NUISANCE SPECIES (ANS) - See attached

Statutory authority

see attached

Contact information

Name

Danielle Isenhart

Title

Regulations Manager

Telephone

303-866-3203 x 4625

Email

danielle.isenhart@state.co.us

May 29, 2015

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Notice of Proposed Rulemaking

Tracking number

2015-00321

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

07/09/2015

Time

08:00 AM

Location

Holiday Inn and Suites, 1129 North Summit Boulevard, Frisco, CO 80443

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

Email

danielle.isenhart@state.co.us

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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.

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Notice of Proposed Rulemaking

Tracking number

2015-00319

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

07/09/2015

Time

08:00 AM

Location

Holiday Inn and Suites, 1129 North Summit Boulevard, Frisco, CO 80443

Subjects and issues involved

CHAPTER W-2 - BIG GAME - See Attachment

Statutory authority

see attached

Contact information

Name

Danielle Isenhart

Title

Regulations Manager

Telephone

303-866-3203 x 4625

Email

danielle.isenhart@state.co.us

May 29, 2015

RULE-MAKING NOTICE
PARKS AND WILDLIFE COMMISSION MEETING
July 9-10, 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 **July 9-10, 2015. The Parks and Wildlife Commission meeting will be held at the Holiday Inn and Suites, 1129 North Summit Boulevard, Frisco, CO 80443. 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 - **July 9-10, 2015** beginning **at 8:00 a.m.**

EFFECTIVE DATE OF REGULATIONS approved during the July 2015 Parks and Wildlife Commission meeting: September 1, 2015, unless otherwise noted.

WILDLIFE REGULATIONS

FINAL REGULATIONS

Chapter W-3 - "Furbearers and Small Game, Except Migratory Birds" 2 CCR 406-3, and those related provisions of 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-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 -Migratory Game Birds" - 2 CCR 406-5, and those related provisions of Chapter W-9 ("Division Properties" - 2CCR 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, including, but not limited to, the following:

- Establishing a new 2016 permit for hunting band-tailed pigeons.
- Adjusting the American crow hunting season dates.
- Opening Barr Lake State Park to dove hunting using the reservation system on Sundays and Mondays during the month of September.
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DRAFT 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

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Chapter W-11- "Wildlife Parks and Unregulated Wildlife" 2 CCR 406-11

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PARKS REGULATIONS

DRAFT REGULATIONS:

Chapter P- 8- "Aquatic Nuisance Species" 2 CCR 405-8

Open for review of regulations in accordance with Executive Order D 2012-002 ("Regulatory Efficiency Reviews") to determine if they should be continued in their current form, modified or repealed.

ISSUES IDENTIFICATION:

Chapter P-7 - "Passes, Permits and Registrations" 2 CCR 405-7

Open for consideration of regulations pertaining to increasing camping fees and prices for yurts and cabins on all state parks.

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Notice of Proposed Rulemaking

Tracking number

2015-00316

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

07/09/2015

Time

08:00 AM

Location

Holiday Inn and Suites, 1129 North Summit Boulevard, Frisco, CO 80443

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

Title

Regulations Manager

Telephone

303-866-3203 x 4625

Email

danielle.isenhart@state.co.us

May 29, 2015

RULE-MAKING NOTICE
PARKS AND WILDLIFE COMMISSION MEETING
July 9-10, 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 **July 9-10, 2015. The Parks and Wildlife Commission meeting will be held at the Holiday Inn and Suites, 1129 North Summit Boulevard, Frisco, CO 80443. 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 - **July 9-10, 2015** beginning **at 8:00 a.m.**

EFFECTIVE DATE OF REGULATIONS approved during the July 2015 Parks and Wildlife Commission meeting: September 1, 2015, unless otherwise noted.

WILDLIFE REGULATIONS

FINAL REGULATIONS

Chapter W-3 - "Furbearers and Small Game, Except Migratory Birds" 2 CCR 406-3, and those related provisions of 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-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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- Removal of the porcupine from Chapter W-3, adding it to Regulation No. W-1000(A)(5).

Chapter W-5 - "Small Game -Migratory Game Birds" - 2 CCR 406-5, and those related provisions of Chapter W-9 ("Division Properties" - 2CCR 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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DRAFT 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

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PARKS REGULATIONS

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ISSUES IDENTIFICATION:

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Notice of Proposed Rulemaking

Tracking number

2015-00317

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

07/09/2015

Time

08:00 AM

Location

Holiday Inn and Suites, 1129 North Summit Boulevard, Frisco, CO 80443

Subjects and issues involved

CHAPTER W-5 - MIGRATORY BIRDS - See Attached

Statutory authority

see attached

Contact information

Name

Danielle Isenhart

Title

Regulations Manager

Telephone

303-866-3203 x 4625

Email

danielle.isenhart@state.co.us

May 29, 2015

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July 9-10, 2015

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FINAL REGULATIONS

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PARKS REGULATIONS

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Notice of Proposed Rulemaking

Tracking number

2015-00318

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

07/09/2015

Time

08:00 AM

Location

Holiday Inn and Suites, 1129 North Summit Boulevard, Frisco, CO 80443

Subjects and issues involved

CHAPTER 10 - NONGAME WILDLIFE - See Attached

Statutory authority

see attached

Contact information

Name

Danielle Isenhart

Title

Regulations Manager

Telephone

303-866-3203 x 4625

Email

danielle.isenhart@state.co.us

May 29, 2015

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PARKS AND WILDLIFE COMMISSION MEETING
July 9-10, 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 **July 9-10, 2015. The Parks and Wildlife Commission meeting will be held at the Holiday Inn and Suites, 1129 North Summit Boulevard, Frisco, CO 80443. 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 - **July 9-10, 2015** beginning **at 8:00 a.m.**

EFFECTIVE DATE OF REGULATIONS approved during the July 2015 Parks and Wildlife Commission meeting: September 1, 2015, unless otherwise noted.

WILDLIFE REGULATIONS

FINAL REGULATIONS

Chapter W-3 - "Furbearers and Small Game, Except Migratory Birds" 2 CCR 406-3, and those related provisions of 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-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 -Migratory Game Birds" - 2 CCR 406-5, and those related provisions of Chapter W-9 ("Division Properties" - 2CCR 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, including, but not limited to, the following:

- Establishing a new 2016 permit for hunting band-tailed pigeons.
- Adjusting the American crow hunting season dates.
- Opening Barr Lake State Park to dove hunting using the reservation system on Sundays and Mondays during the month of September.
- Adding additional hunting days to the Remainder Zone for the Central Flyway dark goose season.
- Opening Highline Lake State Park to youth waterfowl hunting during the youth only season weekend.

DRAFT 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 establishing a program to provide public hunting access to Rocky Mountain bighorn sheep on private land.

Chapter W-11- "Wildlife Parks and Unregulated Wildlife" 2 CCR 406-11

Open for consideration of regulations amending provisions related to wildlife sanctuaries. Proposed amendments include the establishment of a provisional wildlife sanctuary license as well as addition of Global Federation of Animal Sanctuaries accreditation or verification as an alternative option to the currently required AZA accreditation or certification.

PARKS REGULATIONS

DRAFT REGULATIONS:

Chapter P- 8- "Aquatic Nuisance Species" 2 CCR 405-8

Open for review of regulations in accordance with Executive Order D 2012-002 ("Regulatory Efficiency Reviews") to determine if they should be continued in their current form, modified or repealed.

ISSUES IDENTIFICATION:

Chapter P-7 - "Passes, Permits and Registrations" 2 CCR 405-7

Open for consideration of regulations pertaining to increasing camping fees and prices for yurts and cabins on all state parks.

Except for the day and 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:**

June 25, 2015, for mailing by the Division of Parks and Wildlife to the Parks and Wildlife Commission on **June 26, 2015.**

Comments received by the Division after noon on **June 25, 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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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 **June 29, 2015**.

Notice of Proposed Rulemaking

Tracking number

2015-00322

Department

400 - Department of Natural Resources

Agency

406 - Colorado Parks and Wildlife (406 Series, Wildlife)

CCR number

2 CCR 406-11

Rule title

CHAPTER W-11 - WILDLIFE PARKS AND UNREGULATED WILDLIFE

Rulemaking Hearing

Date

07/09/2015

Time

08:00 AM

Location

Holiday Inn and Suites, 1129 North Summit Boulevard, Frisco, CO 80443

Subjects and issues involved

CHAPTER W-11 - WILDLIFE PARKS AND UNREGULATED WILDLIFE - See Attached

Statutory authority

see attached

Contact information

Name

Danielle Isenhart

Title

Regulations Manager

Telephone

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Email

danielle.isenhart@state.co.us

May 29, 2015

RULE-MAKING NOTICE
PARKS AND WILDLIFE COMMISSION MEETING
July 9-10, 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 **July 9-10, 2015. The Parks and Wildlife Commission meeting will be held at the Holiday Inn and Suites, 1129 North Summit Boulevard, Frisco, CO 80443. 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.

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FINAL REGULATIONS

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Notice of Proposed Rulemaking

Tracking number

2015-00305

Department

500,1008,2500 - Department of Human Services

Agency

502 - Behavioral Health

CCR number

2 CCR 502-5

Rule title

Behavioral Health Executive Director Rules

Rulemaking Hearing

Date

07/10/2015

Time

11:30 AM

Location

Colorado Department of Human Services, 1575 Sherman Street, 8th Floor C-Stat Room, Denver, CO 80203

Subjects and issues involved

#15-4-10-1: Procedures for Applying for and Awarding of Gambling Addiction Grants

Statutory authority

12-47.1-1601(4)(a.5)(I); 26-1-105(2)(a); 26-1-108; 26-1-109; 26-1-111; 27-61-101, C.R.S. (2014)

Contact information

Name

Ryan Templeton

Title

Office of Behavioral Health

Telephone

303-866-7405

Email

ryan.templeton@state.co.us

Title of Proposed Rule: Procedures for Applying for and Awarding of Gambling Addiction Grants

Rule-making#: 15-4-10-1

Office/Division or Program: Office of Behavioral Health/ Community Programs

Rule Author: Ryan Templeton

Phone: 303-866-7405

E-Mail: ryan.templeton@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?)*

These proposed rules, in response to an audit recommendation, establish the procedures for applying for and awarding of grants for gambling addiction counseling, required by executive director rule-making authority. Gambling addiction can affect all areas of an individual's life. These rules outline how grants are applied for and awarded to provide counseling for Colorado residents assessed to be problem gamblers, as well as others who have been affected by problem gambling.

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:

Executive Director Authority: 26-1-108, C.R.S. (2014) – powers and duties of the executive director, including rule-making;
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:
12-47.1-1601(4)(a.5)(I), C.R.S. (2014) - executive director shall adopt rules establishing the procedure for applying for and awarding a gambling addiction grant;
26-1-105(2)(a), C.R.S. (2014) – executive director may establishing such divisions, sections and other units within the state department as are necessary for the proper and efficient discharge of its power, duties, and function;
27-61-101, C.R.S. (2014) – creating the office of behavioral health

Initial Review	05/08/2015	Final Adoption	06/05/2015
Proposed Effective Date	08/01/2015	EMERGENCY Adoption	N/A

[Note: "Strikethrough" indicates deletion from existing rules and "all caps" indicates addition of new rules.]

Title of Proposed Rule: Procedures for Applying for and Awarding of Gambling Addiction Grants

Rule-making#: 15-4-10-1

Office/Division or Program: Office of Behavioral Health/ Community Programs

Rule Author: Ryan Templeton

Phone: 303-866-7405

E-Mail: ryan.templeton@state.co.us

STATEMENT OF BASIS AND PURPOSE (continued)

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?

This rule-making package was reviewed by stakeholders, including the grant contractor, a psychotherapist, and a representative from the Problem Gambling Coalition of Colorado, during a stakeholder meeting on May 5, 2015.

Attachments:
Regulatory Analysis
Overview of Proposed Rule
Stakeholder Comment Summary

Title of Proposed Rule: Procedures for Applying for and Awarding of Gambling Addiction Grants

Rule-making#: 15-4-10-1

Office/Division or Program: Office of Behavioral Health/ Community Programs

Rule Author: Ryan Templeton

Phone: 303-866-7405

REGULATORY ANALYSIS

1. List of groups impacted by this rule:
Which groups of persons will benefit, bear the burdens or be adversely impacted by this rule?

All Colorado residents will benefit from having more gambling counseling services available.

The groups of persons who will benefit from this rule are the Colorado residents in need of gambling addiction counseling, due to having grant moneys available for gambling addiction counseling, including prevention and education.

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?

Short-term consequences of this rule are that more moneys, in the form of grants, will be available for gambling addiction counseling.

Long-term consequences of this rule are that more and more Colorado residents in need of gambling addiction counseling will receive counseling services, which will create a more informed society regarding prevention and education around gambling addiction.

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)*

Since the gambling addiction counseling grants will be awarded to programs that have or are seeking national accreditation to provide gambling addiction counseling services, either state or local public or private entities, there will be no State Fiscal Impact.

Pursuant to Section 12-47.1-701(2)(a)(III), C.R.S., of the moneys transferred to the limited gaming impact account and the gambling addiction account, two percent shall be used to award grants from the provision of gambling addiction counseling, including prevention and education, to Colorado residents.

Pursuant to Section 12-47.1-1601(4)(a.5)(I), C.R.S, the Colorado Department of Human Services may use up to five percent of the moneys in the gambling addiction account, each fiscal year, to cover the costs associated with administering the grant program.

REGULATORY ANALYSIS (continued**)**

County Fiscal Impact

Since the gambling addiction counseling grants will be awarded to programs that have or are seeking national accreditation to provide gambling addiction counseling services, either state or local public or private entities, there will be no County Fiscal Impact.

Federal Fiscal Impact

Since the gambling addiction counseling grants will be awarded to programs that have or are seeking national accreditation to provide gambling addiction counseling services, either state or local public or private entities, there will be no Federal Fiscal Impact.

No federal moneys are involved, only state moneys from the local government limited gaming impact fund are awarded as gambling addiction counseling grants.

Other Fiscal Impact *(such as providers, local governments, etc.)*

Since the gambling addiction counseling grants will be awarded to programs that have or are seeking national accreditation to provide gambling addiction counseling services, either state or local public or private entities, there will be no Other Fiscal Impact.

Pursuant to Section 12-47.1-701(2)(a)(III), C.R.S., of the moneys transferred to the limited gaming impact account and the gambling addiction account, two percent shall be used to award grants from the provision of gambling addiction counseling, including prevention and education, to Colorado residents.

4. Data Description:
List and explain any data, such as studies, federal announcements, or questionnaires, which were relied upon when developing this rule?

No data was used in development of this rule.

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 considered. Section 12-47.1-1601(4)(a.5)(I), C.R.S., requires the executive director of the department of human services to promulgate rules.

Title of Proposed Rule: Procedures for Applying for and Awarding of Gambling Addiction Grants

Rule-making#: 15-4-10-1

Office/Division or Program: Office of Behavioral Health/ Community Programs

Rule Author: Ryan Templeton

Phone: 303-866-7405

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			
20.000	New Rule Title	Executive Director rules for applying for and awarding of gambling addiction grants	__	Yes	X	No
20.100	New	Procedure for Awarding Gambling Addiction Grants	__	Yes	X	No
20.110	New	General authority for grant awards	__	Yes	X	No
20.200	New	Grants will be awarded to local public or private programs that provide gambling addiction counseling services	__	Yes	X	No
20.300	New	Application procedure and criteria for grant awardees	__	Yes	X	No
20.400	New	A quarterly report is required	__	Yes	X	No

Title of Proposed Rule: Procedures for Applying for and Awarding of Gambling Addiction Grants

Rule-making#: 15-4-10-1

Office/Division or Program: Office of Behavioral Health/ Community Programs

Rule Author: Ryan Templeton

Phone: 303-866-7405

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):

The current grant contractor, a psychotherapist, and a representative from the Problem Gambling Coalition of Colorado were included in the development of these proposed rules.

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:

The current grant contractor, a psychotherapist, and a representative from the Problem Gambling Coalition of Colorado were included in the development of these proposed rules.

A stakeholder meeting was held on May 5, 2015, with the grant contractor, the psychotherapist, and the representative from the Problem Gambling Coalition of Colorado.

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?

[ ] Yes [X] No

Date presented _____. Were there any issues raised? ____ Yes ____ No

If not, why: Since the gambling addiction counseling grants will be awarded to existing programs that have or are seeking national accreditation to provide gambling addiction counseling services, either state or local public or private entities, there will be no county impact.

Comments were received from stakeholders on the proposed rules:

[ ] Yes [X] No

Title of Proposed Rule: Procedures for Applying for and Awarding of Gambling Addiction Grants

Rule-making#: 15-4-10-1

Office/Division or Program: Office of Behavioral Health/ Community Programs

Rule Author: Ryan Templeton

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STAKEHOLDER COMMENT SUMMARY (continued)

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.

No stakeholder comments were received. The grant contractor, the psychotherapist, and the representative from the Problem Gambling Coalition of Colorado all agreed during the stakeholder meeting on May 5, 2015, that the proposed rules appeared to address how their programs run.

20.000 OFFICE OF BEHAVIORAL HEALTH - EXECUTIVE DIRECTOR RULES

20.100 PROCEDURE FOR AWARDING GAMBLING ADDICTION GRANTS

20.110 GENERAL PROVISIONS

PURSUANT TO SECTION 12-47.1-701(2)(a)(III), C.R.S., OF THE MONEYS TRANSFERRED TO THE LIMITED GAMING IMPACT ACCOUNT AND THE GAMBLING ADDICTION ACCOUNT, TWO PERCENT SHALL BE USED TO AWARD GRANTS FOR THE PROVISION OF GAMBLING ADDICTION COUNSELING, INCLUDING PREVENTION AND EDUCATION, TO COLORADO RESIDENTS.

20.200 APPLICATION AND AWARDING PROCEDURE AND CRITERIA FOR CONTRACTOR

PURSUANT TO SECTION 12-102-201, C.R.S., AN ORGANIZATION WILL BE SELECTED TO BE A CONTRACTOR, AS DEFINED IN SECTION 24-101-301(6), C.R.S., FOR THE GRANT AWARD PROCESS IN ACCORDANCE WITH THE COLORADO PROCUREMENTS CODE AS FOUND IN THE COLORADO DEPARTMENT OF PERSONNEL AND ADMINISTRATION (1 CCR 101-9).

20.300 GRANT APPLICATION AND AWARDING PROCEDURE, AND CRITERIA FOR GRANT AWARDEES

A. GRANTS MUST BE AWARDED TO:

1. STATE OR LOCAL PUBLIC OR PRIVATE ENTITIES.

2. PROGRAMS OR INDIVIDUALS THAT PROVIDE GAMBLING ADDICTION COUNSELING SERVICES AND HAVE OR ARE SEEKING NATIONALLY ACCREDITED GAMBLING ADDICTION COUNSELORS.

B. A MAJORITY OF THE MONEYS IN THE GAMBLING ADDICTION ACCOUNT MUST BE AWARDED, AS GRANTS, FOLLOWING GRANT PROCEDURES IDENTIFIED IN SECTION A, ABOVE, TO BEHAVIORAL HEALTH PROFESSIONALS AND ADDICTION COUNSELORS THAT HAVE OR ARE PURSUING NATIONAL CERTIFICATION AS A GAMBLING COUNSELOR.

C. IN ORDER TO ENSURE THAT QUALIFIED AND COMPETENT PROFESSIONALS WILL PROVIDE TREATMENT SERVICES TO THOSE INDIVIDUALS WHO ARE ASSESSED TO BE PROBLEM GAMBLERS AS WELL AS OTHERS WHO HAVE BEEN AFFECTED BY THE PROBLEM GAMBLER, APPLICANTS MUST PROVIDE PROOF THAT HE OR SHE HAS COMPLETED AT LEAST HALF OF THE COUNSELING HOURS REQUIRED FOR NATIONAL ACCREDITATION.

D. THE CONTRACTOR MUST DESIGN A GRANT APPLICATION PROCEDURE TO INCLUDE THE FOLLOWING:

1. LOCATION TO APPLY FOR THE GRANT;

2. GRANT APPLICATION;

3. NOTIFICATION PROCESS FOR APPROVAL OR DENIAL OF THE GRANT APPLICATION; AND,

4. APPEALS PROCESS FOR APPLICATION DENIAL.

E. THE CONTRACTOR MUST ENSURE THAT THE APPLICANTS MEET THE FOLLOWING REQUIREMENTS:

1. BACHELOR'S DEGREE IN A BEHAVIORAL HEALTH FIELD;

2. A MINIMUM OF FIFTEEN (15) HOURS OF APPROVED GAMBLING SPECIFIC TRAINING OR EDUCATION WITH APPROPRIATE SUPPORTING DOCUMENTATION;

3. A MINIMUM OF FIFTY (50) HOURS AS A GAMBLING COUNSELOR DELIVERING DIRECT TREATMENT TO PROBLEM/PATHOLOGICAL GAMBLERS AND SIGNIFICANT OTHERS; AND,

4. A MINIMUM OF TWO (2) ONE-HOUR SESSIONS OF APPROVED SUPERVISION/CONSULTATION WITH AN INTERNATIONAL GAMBLING COUNSELOR BOARD APPROVED CLINICAL CONSULTANT (BACC).

F. THE CONTRACTOR MUST OBTAIN VERIFICATION THAT THE GRANT AWARDEES MAINTAINED OR OBTAINED THEIR NATIONAL CERTIFICATION AS A GAMBLING COUNSELOR.

20.400 REPORTING

THE CONTRACTOR SELECTED MUST SUBMIT A QUARTERLY REPORT TO THE COLORADO DEPARTMENT OF HUMAN SERVICES WITHIN THIRTY (30) DAYS OF THE END OF EACH QUARTER. THESE REPORTS MUST DETAIL:

A. THE NUMBER OF GRANT APPLICATIONS RECEIVED;

B. THE AMOUNT OF MONEY REQUESTED;

C. THE TOTAL AMOUNT OF MONEY AWARDED;

D. THE PERSONS RECEIVING THE GRANTS; AND,

E. THE DOLLAR AMOUNTS AWARDED TO EACH PERSON.

****

Notice of Proposed Rulemaking

Tracking number

2015-00258

Department

700 - Department of Regulatory Agencies

Agency

718 - Passenger Tramway Safety Board

CCR number

3 CCR 718-1

Rule title

PASSENGER TRAMWAYS

Rulemaking Hearing

Date

08/27/2015

Time

09:00 AM

Location

1560 Broadway, Conference Room 1250-C Denver CO 80202

Subjects and issues involved

Revision of Rule 3.2.9 and 4.2.9

Statutory authority

25-5-704 (1) (a)

Contact information

Name

Nicki Cochrell

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3.2.9 Manual control devices.

May 15, 2006 to Present

All automatic and manual stop and shutdown devices shall be of the manually reset type. An exception to this requirement is allowed for magnetic or optically operated automatic stop devices, if the operating circuit is such that it indicates that such devices initiated the stop and the circuit is of the manually reset type.

Manual stop switches (push button) shall be positively opened mechanically and their opening shall not be dependent upon springs.

Manual control devices shall be installed in all attendants' and operators' work positions, in machine rooms, and out-of-doors in proximity to all loading and unloading areas. As a minimum, each of these control locations shall include an Emergency Shutdown device and a Normal Stop device. All manual control devices located in or on a control cabinet shall be mounted so that they are in the same plane or face of the cabinet. The control devices shall not be located in a position that would require the operator or attendant to pass through the path of moving carriers in order to operate the controls.

All control devices shall be conspicuously and permanently marked with the proper function and color code.

A full length stop cord or equivalent shall be provided adjacent to the terminal conveying equipment access ways provided for the inspection and maintenance while equipment is in operation.

Prior to May 15, 2006

All automatic and manual stop and shutdown devices shall be of the manually reset type. An exception to this requirement is allowed for magnetic or optically operated automatic stop devices, if the operating circuit is such that it indicates that such devices initiated the stop and the circuit is of the manually reset type. Manual stop switches (push button) shall be positively opened mechanically and their opening shall not be dependent upon springs.

Manual control devices shall be installed in all attendants' and operators' work positions, in machine rooms, and out-of-doors in proximity to all loading and unloading areas. As a minimum at downhill loading stations, each of these control locations shall include an Emergency Shutdown device or a Normal Stop device. All manual control devices located in or on a control cabinet shall be mounted so that they are in the same plane or face of the cabinet. The control devices shall not be located in a position that would require the operator or attendant to pass through the path of moving carriers in order to operate the controls.

The devices shall be conspicuously and permanently marked with the proper function and color code.

4.2.9 Manual control devices.

May 15, 2006 to Present
All automatic and manual stop and shutdown devices shall be of the manually reset type. An exception to this requirement is allowed for magnetic or optically operated automatic stop devices, if the operating circuit is such that it indicates that such devices initiated the stop and the circuit is of the manually reset type.

Manual stop switches (push button) shall be positively opened mechanically and their opening shall not be dependent upon springs.

Manual control devices shall be installed in all attendants' and operators' work positions, in machine rooms, and out-of-doors in proximity to all loading and unloading areas. As a minimum, each of these control locations shall include an Emergency Shutdown device and a Normal Stop device. All manual control devices located in or on a control cabinet shall be mounted so that they are in the same plane or face of the cabinet. The control devices shall not be located in a position that would require the operator or attendant to pass through the path of moving carriers in order to operate the controls.

All control devices shall be conspicuously and permanently marked with the proper function and color code.

Prior to May 15, 2006:
All automatic and manual stop and shutdown devices shall be of the manually reset type. An exception to this requirement is allowed for magnetic or optically operated automatic stop devices, if the operating circuit is such that it indicates that such devices initiated the stop and the circuit is of the manually reset type. Manual stop switches (push button) shall be positively opened mechanically and their opening shall not be dependent upon springs.

Manual control devices shall be installed in all attendants' and operators' work positions, in machine rooms, and out-of-doors in proximity to all loading and unloading areas. As a minimum at downhill loading stations, each of these control locations shall include an Emergency Shutdown device or a Normal Stop device. All manual control devices located in or on a control cabinet shall be mounted so that they are in the same plane or face of the cabinet. The control devices shall not be located in a position that would require the operator or attendant to pass through the path of moving carriers in order to operate the controls.

The devices shall be conspicuously and permanently marked with the proper function and color code.

COLORADO
Department of
Regulatory Agencies
Division of Professions and Occupations

Business and Inspections Branch
Passenger Tramway Safety Board

NOTICE OF RULE MAKING HEARING

Pursuant to section 25-5-704 (1) (a) of the Colorado Revised Statutes, you are hereby advised that the Colorado Passenger Tramway Safety Board will be holding a public rule making hearing on Thursday, August 27, 2015, commencing at 9:00 a.m. at 1560 Broadway, Conference Room 1250-C, Denver, Colorado for the purpose of considering the following.

The Board will consider the revision of the following rules and regulations:

Rule 3.2.9	**Manual control devices**
Rule 4.2.9	**Manual control devices**

Please be advised that the revisions of these rules may be changed after public comment and formal hearing.

At the time and place stated in this notice, the Colorado Passenger Tramway Safety Board will afford interested parties an opportunity to submit written data, views, or arguments, and to submit briefly (3 minutes per item) the same orally if they so desire. **It is requested that written testimony be submitted to the Colorado Passenger Tramway Safety Board at least ten (10) days prior to the rule making hearing.** All submissions will be considered.

Dated this 20th day of May, 2015.

BY ORDER OF THE COLORADO PASSENGER TRAMWAY SAFETY BOARD

Joyce J. Young, Program Director

Notice of Proposed Rulemaking

Tracking number

2015-00262

Department

1000 - Department of Public Health and Environment

Agency

1001 - Air Quality Control Commission

CCR number

5 CCR 1001-8

Rule title

REGULATION NUMBER 6 STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

Rulemaking Hearing

Date

08/20/2015

Time

09:00 AM

Location

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

Subjects and issues involved

to consider revisions to Regulation Number 6, Part A (NSPS) to incorporate by reference changes the EPA made to its New Source Performance Standards rules. Additionally, the Division will request that the Commission approve of Colorados revised CAA Section 111(d) State Plan for Hospital/Medical/Infectious Waste Incinerators (HMIWI), which implements the emission guidelines and compliance times for this source category specified in 40 C.F.R. Part 60, Subpart Ce.

Statutory authority

Sections 25-7-105(1)(b) and 25-7-109; 25-7-106(6); 24-4-103 and 25-7-110, 110.5 and 110.8 C.R.S., as applicable and amended.

Contact information

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DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Air Quality Control Commission

REGULATION NUMBER 6

STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

5 CCR 1001-8

PART A

Federal Register Regulations Adopted by Reference

The regulations promulgated by the United States Environmental Protection Agency listed below, found in Part 60, Chapter I, Title 40 of the Code of Federal Regulations (CFR) and in effect as of the dates indicated, but not including later amendments, were adopted by the Colorado Air Quality Control Commission and are hereby incorporated by reference. Copies of the material incorporated by reference are available for public inspection during regular business hours at the Office of the Commission, located at 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530. Parties wishing to inspect these materials should contact the Technical Secretary of the Commission, located at the Office of the Commission. The material incorporated by reference is also available through the United States Government Printing Office, online at www.gpo.gov/fdsys.

All new sources of air pollution and all modified or reconstructed sources of air pollution shall comply with the standards, criteria, and requirements set forth herein. For the purpose of this regulation, the word "Administrator" as used in Part 60, Chapter I, Title 40, of the CFR shall mean the Colorado Air Pollution Control Division, except that in the sections in Table 1, "Administrator" shall mean both the Administrator of the Environmental Protection Agency or his authorized representative and the Colorado Air Pollution Control Division.

TABLE 1

40 CFR Part 60 Subpart*	Section(s)
A	60.8(b)(2) and (b)(3) and those sections throughout the standards that reference 60.8(b)(2) and (b)(3), 60.11(b) and (e).
Da	60.45a.
Ka	60.114a.
Kb	60.111b(f)(4), 60.114b, 60.116b (e)(3)(iii) and (e)(3)(iv), 60.116b(f)(2)(iii).
S	60.195(b).
DD	60.302(d)(3).
GG	60.332(a)(3), 60.335(a).
VV	60.482-1(c)(2), 60.484.
WW	60.493(b)(2)(i)(A), 60.496(a)(1).

40 CFR Part 60 Subpart*	Section(s)
XX	60.502(e)(6).
GGG	60.592(c).
JJJ	60.623.
KKK	60.634.

*And any other section which 40 CFR Part 60 specifically states will not be delegated to the States.

Subpart A General Provisions. 40 CFR Part 60, Subpart A (July 1, ~~2013~~2014).

(See Part B of this Regulation Number 6 for Additional Requirements Regarding Modifications)

Subpart Cb Emission Guidelines and Compliance Times for Existing Sources: Municipal Waste Combustors That Are Constructed On or Before September 20, 1994. 40 CFR Part 60, Subpart Cb (July 1, ~~2013~~2014).

Subpart Cc Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills. 40 CFR Part 60, Subpart Cc (July 1, ~~2013~~2014).

In addition for clarification regarding requirements applicable to existing municipal solid waste landfills, designated facilities as defined in 40 CFR Part 60, Section 60.32c which meet the condition in 40 CFR Part 60, Section 60.33c(a)(1) shall submit to the Division an initial design capacity report and an initial emission rate report in accordance with 40 CFR Part 60, Section 60.757 within 90 days of the effective date of this regulation. If the design capacity report reflects that the facility meets the condition in 40 CFR Part 60, Section 60.33c(a)(2) and the initial NMOC emission rate report reflects that the facility meets the condition in 40 CFR Part 60, Section 60.33c(a)(3), the facility shall comply with the collection and control system requirements in 40 CFR Part 60, Section 60.752(b)(2)(ii), applicable control device requirements in 40 CFR Part 60, Section 60.33c(c)(1), (2) and (3), test methods and procedures requirements in 40 CFR 60.754, operational standards in 40 CFR Part 60, Section 60.753, compliance provisions in 40 CFR Part 60, Section 60.755, monitoring provisions in 40 CFR Part 60, Section 60.756 and reporting and recordkeeping provisions in 40 CFR Part 60, Sections 60.757 and 60.758, respectively. Such facilities must complete installation of air emission collection and control equipment capable of meeting the requirements of this subpart no later than 30 months from the effective date of these requirements or the date on which the source becomes subject to this subpart pursuant to 40 CFR Part 60, Section 60.36c(b) (the date on which the condition in 60.33c(a)(3) is met (i.e., the date of the first annual report in which the non-methane organic compounds emission rate equals or exceeds 50 megagrams per year)), whichever occurs later. These facilities must submit a final collection and control system design plan pursuant to 40 CFR Part 60, Section 60.757(c) within one year of the effective date of these requirements, which must be reviewed and approved by the state. The final collection and control system design plan must specify: (1) the date by which contracts for control systems/process modifications shall be awarded, (which shall be no later than 20 months after the effective date); (2) the date by which on-site construction or installation of the air pollution control device(s) or process changes will begin, (which shall be no later than 24 months after the effective date); and (3) the date by which the construction or installation of the air pollution control device(s) or process changes will be complete (which shall be no later than 30 months after the effective date). In addition, the plan shall include site-specific design plans for the gas collection and control system(s). These facilities shall comply with the approved final collection and control system design plan and shall demonstrate compliance with these emission standards in accordance with 40 CFR Part 60, Section 60.8 not later than 180 days following initial startup of the collection and control system. The Commission designates the

effective date for these requirements applicable to designated facilities, including the state emission standard for existing municipal solid waste landfills, as the date on which the United States Environmental Protection Agency promulgates a final rule approving the state plan under Section 111(d) of the Clean Air Act.

Subpart Ce Emission Guidelines and Compliance Times for Hospital/Medical/Infectious Waste Incinerators. 40 CFR Part 60, Subpart Ce, paragraphs 60.31e, 60.32e, 60.33e, 60.34e, 60.35e, 60.36e, 60.37e, 60.38e, 60.39e (July 1, ~~2013~~2014).

The Commission designates the effective date for these emission limits and other requirements (see Colorado 111(d) plan for Existing Hospital/Medical/Infectious Waste Incinerators in Colorado, adopted August 20, 2015, and obtainable from the Air Quality Control Commission Office) applicable to designated facilities as the date on which the United States Environmental Protection Agency promulgates a final rule in 40 CFR Part 62, Subpart G approving the state plan ~~(which can be obtained from the Air Quality Control Commission office)~~ under Section 111(d) of the Clean Air Act. ~~Designated facilities shall comply with all requirements of this Subpart Ce on or before one year from the effective date for these requirements.~~

Subpart D Standards of Performance for Fossil-Fuel-Fired Steam Generators for which Construction is Commenced after August 17, 1971. 40 CFR Part 60, Subpart D (July 1, ~~2013~~2014).

Subpart Da Standards of Performance for Electric Utility Steam Generators for which Construction is Commenced after September 18, 1978. 40 CFR Part 60, Subpart Da (July 1, ~~2013).~~2014), as amended November 19, 2014 (*79 Fed. Reg. 68788*).

(See Regulation Number 6, Part B, Section VIII. and Regulation Number 8, Part E, Subpart UUUUU for additional requirements regarding Electric Utility Steam Generating Units)

Subpart Db Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units. 40 CFR Part 60, Subpart Db (July 1, ~~2013~~2014).

(See Part B, Section III.D. of this Regulation Number 6 for Additional Requirements)

Subpart Dc Standards of Performance for Small Industrial-Commercial- Institutional Steam Generating Units. 40 CFR Part 60, Subpart Dc (July 1, ~~2013~~2014).

Subpart E Standards of Performance for Incinerators. 40 CFR Part 60, Subpart E (July 1, ~~2013~~2014).

(See Part B, Sections V, VI and VII of this Regulation Number 6 for Additional Requirements)

Subpart Ea Standards of Performance for Municipal Waste Combustors For Which Construction Is Commenced After December 20, 1989 and On or Before September 20, 1994. 40 CFR Part 60, Subpart Ea (July 1, ~~2013~~2014).

Subpart Eb Standards of Performance for Municipal Waste Combustors For Which Construction Is Commenced After September 20, 1994. 40 CFR Part 60, Subpart Eb (July 1, ~~2013~~2014).

(See Part B, Section VI of this Regulation Number 6 for Additional Requirements)

Subpart Ec Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996. 40 CFR Part 60, Subpart Ec (July 1, ~~2013~~2014).

(See Part B, Section V of this Regulation Number 6 for Additional Requirements)

Subpart F Standards of Performance for Portland Cement Plants. 40 CFR Part 60, Subpart F (July 1, ~~2013~~2014).

Subpart G Standards of Performance for Nitric Acid Plants. 40 CFR Part 60, Subpart G (July 1, ~~2013~~2014).

Subpart Ga Standards of Performance for Nitric Acid Plants for Which Construction, Reconstruction, or Modification Commenced After October 14, 2011. 40 CFR Part 60, Subpart Ga (July 1, ~~2013~~2014).

Subpart H Standards of Performance for Sulfuric Acid Plants. 40 CFR Part 60, Subpart H (July 1, ~~2013~~2014).

Subpart I Standards of Performance for Hot Mix Asphalt Facilities. 40 CFR Part 60, Subpart I (July 1, ~~2013~~2014).

Subpart J Standards of Performance for Petroleum Refineries. 40 CFR Part 60, Subpart J (July 1, ~~2013~~2014).

Subpart Ja Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007. 40 CFR Part 60, Subpart Ja ~~(July 1, 2013) as amended December 19, 2013 (78 FR 76753).~~(July 1, 2014).

Subpart K Standards of Performance for Storage Vessels for Petroleum Liquids Constructed after June 11, 1973 and prior to May 19, 1978. 40 CFR Part 60, Subpart K (July 1, ~~2013~~2014).

Subpart Ka Standards of Performance for Storage Vessels for Petroleum Liquids Constructed after May 18, 1978, and prior to July 23, 1984. 40 CFR Part 60, Subpart Ka (July 1, ~~2013~~2014).

Subpart Kb Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for which Construction, Reconstruction, or Modification Commenced after July 23, 1984. 40 CFR Part 60, Subpart Kb (July 1, ~~2013~~2014).

Subpart L Standards of Performance for Secondary Lead Smelters. 40 CFR Part 60, Subpart L (July 1, ~~2013~~2014).

Subpart M Standards of Performance for Secondary Brass and Bronze Production Plants. 40 CFR Part 60, Subpart M (July 1, ~~2013~~2014).

Subpart N Standards of Performance for Iron and Steel Plants. 40 CFR Part 60, Subpart N (July 1, ~~2013~~2014).

Subpart Na Standards of Performance for Basic Oxygen Process Furnaces. 40 CFR Part 60, Subpart Na (July 1, ~~2013~~2014).

Subpart O Standards of Performance for Sewage Treatment Plants. 40 CFR Part 60, Subpart O (July 1, ~~2013~~2014).

Subpart P Standards of Performance for Primary Copper Smelters. 40 CFR Part 60, Subpart P (July 1, ~~2013~~2014).

Subpart Q Standards of Performance for Primary Zinc Smelters. 40 CFR Part 60, Subpart Q (July 1, ~~2013~~2014).

Subpart R Standards of Performance for Primary Lead Smelters. 40 CFR Part 60, Subpart R (July 1, ~~2013~~2014).

Subpart S Standards of Performance for Primary Aluminum Reduction Plants. 40 CFR Part 60, Subpart S (July 1, ~~2013~~2014).

Subpart T Standards of Performance for the Phosphate Fertilizer Industry: Wet-Process Phosphoric Acid Plants. 40 CFR Part 60, Subpart T (July 1, ~~2013~~2014).

Subpart U Standards of Performance for the Phosphate Fertilizer Industry: Superphosphoric Acid Plants. 40 CFR Part 60, Subpart U (July 1, ~~2013~~2014).

Subpart V Standards of Performance for the Phosphate Fertilizer Industry: Diammonium Phosphate Plants. 40 CFR Part 60, Subpart V (July 1, ~~2013~~2014).

Subpart W Standards of Performance for the Phosphate Fertilizer Industry: Triple Superphosphate Plants. 40 CFR Part 60, Subpart W (July 1, ~~2013~~2014).

Subpart X Standards of Performance for the Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities. 40 CFR Part 60, Subpart X (July 1, ~~2013~~2014).

Subpart Y Standards of Performance for Coal Preparation Plants. 40 CFR Part 60, Subpart Y (July 1, ~~2013~~2014).

Subpart Z Standards of Performance for Ferroalloy Production Facilities. 40 CFR Part 60, Subpart Z (July 1, ~~2013~~2014).

Subpart AA Standards of Performance for Steel Plants: Electric Arc Furnaces Constructed after October 21, 1974, and on or before August 17, 1983. 40 CFR Part 60, Subpart AA (July 1, ~~2013~~2014).

Subpart AAa Standards of Performance for Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed after August 17, 1983. 40 CFR Part 60, Subpart AAa (July 1, ~~2013~~2014).

Subpart BB Standards of Performance for Kraft Pulp Mills. 40 CFR Part 60, Subpart BB (July 1, ~~2013~~2014).

Subpart BBa Standards of Performance for Kraft Pulp Mill Affected Sources for Which Construction, Reconstruction, or Modification Commenced After May 23, 2013. 40 CFR Part 60, Subpart BBa (July 1, 2014)

Subpart CC Standards of Performance for Glass Manufacturing Plants. 40 CFR Part 60, Subpart CC (July 1, ~~2013~~2014).

Subpart DD Standards of Performance for Grain Elevators. 40 CFR Part 60, Subpart DD (July 1, ~~2013~~2014).

Subpart EE Standards of Performance for Surface Coating of Metal Furniture. 40 CFR Part 60, Subpart EE (July 1, ~~2013~~2014).

Subpart GG Standards of Performance for Stationary Gas Turbines. 40 CFR Part 60, Subpart GG (July 1, ~~2013~~2014).

(See Subpart KKKK of this Regulation Number 6 for additional requirements for Stationary Combustion Turbines)

Subpart HH Standards of Performance for Lime Manufacturing Plants. 40 CFR Part 60, Subpart HH (July 1, ~~2013~~2014).

Subpart KK Standards of Performance for Lead-Acid Battery Manufacturing Plants. 40 CFR Part 60, Subpart KK (July 1, ~~2013~~2014).

Subpart LL Standards of Performance for Metallic Mineral Processing Plants. 40 CFR Part 60, Subpart LL (July 1, ~~2013~~2014).

Subpart MM Standards of Performance for Automobile and Light-Duty Truck Surface Coating Operations. 40 CFR Part 60, Subpart MM (July 1, ~~2013~~2014).

Subpart NN Standards of Performance for Phosphate Rock Plants. 40 CFR Part 60, Subpart NN (July 1, ~~2013~~2014).

Subpart PP Standards of Performance for Ammonium Sulfate Manufacture. 40 CFR Part 60, Subpart PP (July 1, ~~2013~~2014).

Subpart QQ Standards of Performance for the Graphic Arts Industry: Publication Rotogravure Printing. 40 CFR Part 60, Subpart QQ (July 1, ~~2013~~2014).

Subpart RR Standards of Performance for Pressure Sensitive Tape and Label Surface Coating Operations. 40 CFR Part 60, Subpart RR (July 1, ~~2013~~2014).

Subpart SS Standards of Performance for Industrial Surface Coating: Large Appliances. 40 CFR Part 60, Subpart SS (July 1, ~~2013~~2014).

Subpart TT Standards of Performance for Metal Coil Surface Coating. 40 CFR Part 60, Subpart TT (July 1, ~~2013~~2014).

Subpart UU Standards of Performance for Asphalt Processing and Asphalt Roofing Manufacture. 40 CFR Part 60, Subpart UU (July 1, ~~2013~~2014).

Subpart VV Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for which Construction, Reconstruction or Modification Commenced after January 5, 1981, and on or Before November 7, 2006. 40 CFR Part 60, Subpart VV (July 1, ~~2013~~2014).

Subpart VVa Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for which Construction, Reconstruction or Modification Commenced after November 7, 2006. 40 CFR Part 60, Subpart VVa (July 1, ~~2013~~2014).

Subpart WW Standards of Performance for the Beverage Can Surface Coating Industry. 40 CFR Part 60, Subpart WW (July 1, ~~2013~~2014).

Subpart XX Standards of Performance for Bulk Gasoline Terminals. 40 CFR Part 60, Subpart XX (July 1, ~~2013~~2014).

Subpart BBB Standards of Performance for the Rubber Tire Manufacturing Industry. 40 CFR Part 60, Subpart BBB (July 1, ~~2013~~2014).

Subpart DDD Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry. 40 CFR Part 60, Subpart DDD (July 1, ~~2013~~2014).

Subpart FFF Standards of Performance for Flexible Vinyl and Urethane Coating and Printing. 40 CFR Part 60, Subpart FFF (July 1, ~~2013~~2014).

Subpart GGG Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries for which Construction, Reconstruction, or Modification Commenced After January 4, 1983, and On or Before November 7, 2006. 40 CFR Part 60, Subpart GGG (July 1, ~~2013~~2014).

Subpart GGGa Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries for which Construction, Reconstruction, or Modification Commences After November 7, 2006. 40 CFR Part 60, Subpart GGGa (July 1, ~~2013~~2014).

Subpart HHH Standards of Performance for Synthetic Fiber Production Facilities. 40 CFR Part 60, Subpart HHH (July 1, ~~2013~~2014).

Subpart III Standards of Performance for Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes. 40 CFR Part 60, Subpart III (July 1, ~~2013~~2014).

Subpart JJJ Standards of Performance for Petroleum Dry Cleaners. 40 CFR Part 60, Subpart JJJ (July 1, ~~2013~~2014).

Subpart KKK Standards of Performance for Equipment Leaks of VOC from Onshore Natural Gas Processing Plants. 40 CFR Part 60, Subpart KKK (July 1, ~~2013~~2014).

Subpart LLL Standards of Performance for Onshore Natural Gas Processing: SO2 Emissions. 40 CFR Part 60, Subpart LLL (July 1, ~~2013~~2014).

Subpart NNN Standards of Performance for Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry Distillation Operations. 40 CFR Part 60, Subpart NNN (July 1, ~~2013~~2014).

Subpart OOO Standards of Performance for Nonmetallic Mineral Processing Plants. 40 CFR Part 60, Subpart OOO (July 1, ~~2013~~2014).

Subpart PPP Standards of Performance for Wool Fiberglass Insulation Manufacturing Plants. 40 CFR Part 60, Subpart PPP (July 1, ~~2013~~2014).

Subpart QQQ Standards of Performance for VOC Emissions from Petroleum Refinery Wastewater Systems. 40 CFR Part 60, Subpart QQQ (July 1, ~~2013~~2014).

Subpart RRR Standards of Performance for Volatile Organic Compounds (VOC) Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes. 40 CFR Part 60, Subpart RRR (July 1, ~~2013~~2014).

Subpart SSS Standards of Performance for the Magnetic Tape Manufacturing Industry. 40 CFR Part 60, Subpart SSS (July 1, ~~2013~~2014).

Subpart TTT Standards of Performance for Industrial Surface Coating of Plastic Parts for Business Machines. 40 CFR Part 60, Subpart TTT (July 1, ~~2013~~2014).

Subpart UUU Standards of Performance for Calciners and Dryers in Mineral Industries. 40 CFR Part 60, Subpart UUU (July 1, ~~2013~~2014).

Subpart VVV Standards of Performance for Polymeric Coating of Supporting Substrates. 40 CFR Part 60, Subpart VVV (July 1, ~~2013~~2014).

Subpart WWW Standards of Performance for Municipal Solid Waste Landfills. 40 CFR Part 60, Subpart WWW (July 1, ~~2013~~2014).

Subpart AAAA Standards of Performance for Small Municipal Waste Combustion Units for which Construction is Commenced after August 30, 1999 or for which Modification or Reconstruction is Commenced after June 6, 2001. 40 CFR Part 60, Subpart AAAA (July 1, ~~2013~~2014).

Subpart CCCC Standards of Performance for Commercial and Industrial Solid Waste Incineration Units for which Construction is Commenced after November 30, 1999 or for which Modification or Reconstruction is Commenced on or after June 1, 2001. 40 CFR Part 60, Subpart CCCC (July 1, ~~2013~~2014).

Subpart DDDD Emissions Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units that Commenced Construction On or Before November 30, 1999 (July 1, ~~2013~~2014).

Subpart EEEE Standards of Performance for Other Solid Waste Incineration Units for which Construction is Commenced after December 9, 2004 or for which Modification or Reconstruction is Commenced on or after June 16, 2006. 40 CFR Part 60, Subpart EEEE (July 1, ~~2013~~2014).

Subpart FFFF Emission Guidelines and Compliance Times for Other Solid Waste Incineration Units that Commenced Construction on or before December 9, 2004. 40 CFR Part 60, Subpart FFFF, Sections 60.2991 through 60.2994, 60.3000 through 60.3078, and Tables 1-5 (July 1, ~~2013~~2014).

Subpart HHHH Emission Guidelines and Compliance Times for Coal-Fired Electric Steam Generating Units. Repealed: This rule was vacated by the February 8, 2008 D.C. Circuit Court of Appeals decision.

Subpart IIII Standards of Performance for Stationary Compression Ignition Internal Combustion Engines. 40 CFR Part 60, Subpart IIII (July 1, ~~2013~~2014).

Subpart KKKK Standards of Performance for Stationary Combustion Turbines. 40 CFR Part 60, Subpart KKKK (July 1, ~~2013~~2014).

(See Subpart GG for additional requirements for Stationary Gas Turbines)

Subpart LLLL Standards of Performance for New Sewage Sludge Incineration Unit. 40 CFR Part 60, Subpart LLLL (July 1, ~~2013~~2014).

Subpart MMMM Emission Guidelines and Compliance Times for Existing Sewage Sludge Incineration Units. 40 CFR Part 60, Subpart MMMM (July 1, ~~2013~~2014).

Subpart OOOO Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution. 40 CFR Part 60, Subpart OOOO, (July 1, ~~2013~~2014), as amended December 31, 2014 (*70 Fed. Reg. 79036*).

APPENDIX A to Part 60 Test Methods. 40 CFR Part 60 (July 1, ~~2013~~2014).

APPENDIX B to Part 60 Performance Specifications. 40 CFR Part 60 (July 1, ~~2013~~2014).

APPENDIX C to Part 60 Determination of Emission Rate Change. 40 CFR Part 60 (July 1, ~~2013~~2014).

APPENDIX D to Part 60 Required Emission Inventory Information. 40 CFR Part 60 (July 1, ~~2013~~2014).

APPENDIX F to Part 60 Quality Assurance Procedures. 40 CFR Part 60 (July 1, ~~2013~~2014).

APPENDIX I to Part 60 Removable Label and Owner's Manual. 40 CFR Part 60 (July 1, ~~2013~~2014).

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STATEMENTS OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE (For Part A)

~~XIX.~~XXI. Adopted February 19, 2015

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XXII. Adopted August 20, 2015

Background

This Statement of Basis, Specific Statutory Authority, and Purpose complies with the requirements of the Colorado Administrative Procedures Act, Section 24-4-103, C.R.S., the Colorado Air Pollution Prevention and Control Act, Sections 25-7-110 and 25-7-110.5, C.R.S., and the Air Quality Control Commission's ("Commission") Procedural Rules.

Basis

EPA promulgated amendments to 40 C.F.R. Part 60, Subparts A, Da, Db, Ec, H, O, BB, BBa, GG, KK, LL, UU, NNN, IIII, OOOO and Appendixes A, B and F. The State of Colorado is required under Section 111 of the Clean Air Act ("CAA") to adopt such New Source Performance Standards ("NSPS") into its regulations in order to maintain agency authority with regard to the standards. The CAA Section 111(c) provides broad flexibility for states to seek, and EPA to grant, delegation of authority to implement the NSPS.

Specific Statutory Authority

The Colorado Air Pollution Prevention and Control Act, Sections 25-7-105(1)(b) and 25-7-109, C.R.S. authorize the Commission to adopt emission control regulations, including emission control regulations relating to new stationary sources, for the development of an effective air quality control program. Further, Section 25-7-106(6) authorizes the Commission to require testing, monitoring, and recordkeeping.

Purpose

Adoption of the federal rules in 40 C.F.R. Part 60, Subparts A, Da, Db, Ec, H, O, BB, BBa, GG, KK, LL, UU, NNN, IIII, OOOO and Appendixes A, B and F, makes these rules and revisions enforceable under Colorado law. Additionally, approval of Colorado's HMIWI 111(d) plan and adoption of the corresponding regulatory revisions allows the Division to implement and enforce the Emission Guidelines and Compliance Times in 40 C.F.R. Part 60, Subpart Ce. Adoption of the rules will not impose additional requirements upon sources beyond the minimum required by federal law and may benefit the regulated community by providing sources with up-to-date information.

Further, these revisions will correct any typographical, grammatical and formatting errors found within the regulation.

COLORADO
Air Quality Control Commission
Department of Public Health & Environment

NOTICE OF WRITTEN COMMENT ONLY RULEMAKING HEARING

Regarding proposed revisions to:

Regulation Number 6, Part A

SUBJECT:

The Air Quality Control Commission will hold a rulemaking hearing to consider revisions to Regulation Number 6, Part A (NSPS) to incorporate by reference changes the EPA made to its New Source Performance Standards rules. Additionally, the Division will request that the Commission approve of Colorado's revised CAA Section 111(d) State Plan for Hospital/Medical/Infectious Waste Incinerators ("HMIWI"), which implements the emission guidelines and compliance times for this source category specified in 40 C.F.R. Part 60, Subpart Ce.

All required documents for this rulemaking can be found on the Commission website at: https://www.colorado.gov/pacific/cdphe/aqcc

HEARING SCHEDULE:

DATE: August 20, 2015
TIME: 9:00 AM
PLACE: Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South, Sabin Conference Room
Denver, CO 80246

PUBLIC COMMENT:

This is a written comment only rulemaking hearing. The Commission encourages all interested persons to provide their views in writing prior to or at the hearing. The Commission especially solicits comments and analyses from persons who will incur directly some cost or benefit from the proposed revisions. Written and/or electronic submissions should be received in the Commission Office by August 4, 2015 to allow for advance review by the Commission. No testimony will be taken at the hearing except for good cause shown.

Information should be printed and include: your name, address, phone number, email address, and the name of the group that you may be representing if applicable.

Written submissions should be mailed to:
Colorado Air Quality Control Commission

Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South, EDO-AQCC-A5
Denver, Colorado 80246

Email submissions should be emailed to: cdphe.aqcc-comments@state.co.us

STATUTORY AUTHORITY FOR THE COMMISSION'S ACTIONS:

The Colorado Air Pollution Prevention and Control Act, Sections 25-7-105(1)(b) and 25-7-109, C.R.S. authorize the Commission to adopt emission control regulations, including emission control regulations relating to new stationary sources, for the development of an effective air quality control program. Further, Section 25-7-106(6) authorizes the Commission to require testing, monitoring, and recordkeeping.

The rulemaking hearing will be conducted in accordance with Sections 24-4-103 and 25-7-110, 110.5 and 110.8 C.R.S., as applicable and amended, the Commission's Procedural Rules, and as otherwise stated in this notice. This list of statutory authority is not intended as an exhaustive list of the Commission's statutory authority to act in this matter.

Dated this 22nd day of May 2015 at Denver, Colorado

Colorado Air Quality Control Commission

Michael Silverstein, Administrator

Notice of Proposed Rulemaking

Tracking number

2015-00263

Department

1000 - Department of Public Health and Environment

Agency

1001 - Air Quality Control Commission

CCR number

5 CCR 1001-10

Rule title

REGULATION NUMBER 8 CONTROL OF HAZARDOUS AIR POLLUTANTS

Rulemaking Hearing

Date

08/20/2015

Time

09:00 AM

Location

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

Subjects and issues involved

To consider revisions to Regulation Number 8, Parts A and E to incorporate by reference changes the EPA made to its National Emission Standards for Hazardous Air Pollutants rules.

Statutory authority

Sections 25-7-105(1)(b) and 25-7-109(2)(h) and 109(4); 24-4-103 and 25-7-110, 110.5 and 110.8 C.R.S., as applicable and amended.

Contact information

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DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Air Quality Control Commission

REGULATION NUMBER 8

CONTROL OF HAZARDOUS AIR POLLUTANTS

5 CCR 1001-10

PART A Federal NESHAPs

I. Federal NESHAPs

The provisions of Part 61, Chapter I, Title 40, of the Code of Federal Regulations (CFR), promulgated by the U.S. Environmental Protection Agency listed in this section are hereby incorporated by reference by the Air Quality Control Commission and made a part of the Colorado Air Quality Control Commission Regulations. Materials incorporated by reference are those in existence as of the dates indicated and do not include later amendments. The material incorporated by reference is available for public inspection during regular business hours at the Office of the Commission, located at 4300 Cherry Creek Drive South, Denver, Colorado 80246. Parties wishing to inspect these materials should contact the Technical Secretary of the Commission, located at the Office of the Commission. The material incorporated by reference is also available through the United States Government Printing Office, online at www.gpo.gov/fdsys.

All new sources of air pollution and all modified or reconstructed sources of air pollution shall comply with the standards, criteria, and requirements set forth herein. For the purpose of this regulation "Administrator" shall mean both the Administrator of the Environmental Protection Agency or his/her authorized representative and the Colorado Air Pollution Control Division.

Subpart A General Provisions 40 C.F.R. Part 61 (July 1, ~~2013~~2014).

Subpart B Repealed – Reserved for National Emission Standards for Radon Emissions from Underground Uranium Mines 40 C.F.R. Part 61.

Subpart C National Emission Standard for Beryllium 40 C.F.R. Part 61 (July 1, ~~2013~~2014).

Subpart D National Emission Standard for Beryllium Rocket Motor Firing 40 C.F.R. Part 61 (July 1, ~~2013~~2014).

Subpart E National Emission Standard for Mercury 40 C.F.R. Part 61 (July 1, ~~2013~~2014).

Subpart F National Emission Standard for Vinyl Chloride 40 C.F.R. Part 61 (July 1, ~~2013~~2014).

Subpart H Repealed – Reserved for National Emission Standards for Emissions of Radionuclides Other Than Radon From Department of Energy Facilities 40 C.F.R. Part 61.

Subpart J National Emission Standard for Equipment leaks (fugitive Emission sources) of Benzene 40 C.F.R. Part 61 (July 1, ~~2013~~2014).

Subpart K Repealed – Reserved for National Emission Standards for Radionuclide Emissions from Elemental Phosphorous Plants 40 C.F.R. Part 61.

Subpart L National Emission Standard for Benzene Emissions from Coke By-Product Recovery Plants 40 C.F.R. Part 61 (July 1, ~~2013~~2014).

Subpart N National Emission Standard for Inorganic Arsenic Emissions from Glass Manufacturing Plants 40 C.F.R. Part 61 (July 1, ~~2013~~2014).

Subpart O National Emission Standard for Inorganic Arsenic Emissions from Primary Copper Smelters 40 C.F.R. Part 61 (July 1, ~~2013~~2014).

Subpart P National Emission Standard for Inorganic Arsenic Emissions from Arsenic Trioside and Metallic Arsenic Production Facilities 40 C.F.R. Part 61 (July 1, ~~2013~~2014).

Subpart Q Repealed – Reserved for National Emission Standards for Radon Emissions From Department of Energy Facilities 40 C.F.R. Part 61.

Subpart R Repealed – Reserved for National Emission Standards for Radon Emissions from Phosphogypsum Stacks, 40 C.F.R. Part 61.

Subpart T Repealed – Reserved for National Emission Standards for Radon Emissions from the Disposal of Uranium Mill Tailings 40 C.F.R. Part 61.

Subpart V National Emission Standard for Equipment Leaks (Fugitive Emission Sources) 40 C.F.R. Part 61 (July 1, ~~2013~~2014).

Subpart W Repealed – Reserved for National Emission Standards for Radon Emissions from Operating Mill Tailings 40 C.F.R. Part 61.

Subpart Y National Emission Standard for Benzene Emissions from Benzene Storage Vessels 40 C.F.R. Part 61 (July 1, ~~2013~~2014).

Subpart BB National Emission Standard for Benzene Emissions from Benzene Transfer Operations 40 C.F.R. Part 61 (July 1, ~~2013~~2014).

Subpart FF National Emission Standard for Benzene Waste Operations 40 C.F.R. Part 61 (July 1, ~~2013~~2014).

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II. Statements of Basis, Specific Statutory Authority and Purpose for Part A

II.M. Adopted August 20, 2015

Incorporation by reference of federal standards in 40 C.F.R. Part 61 into Regulation Number 8, Part A.

Background

This Statement of Basis, Specific Statutory Authority, and Purpose complies with the requirements of the Colorado Administrative Procedures Act, C.R.S., Sections 24-4-103(4) and -103(12.5) for adopted or modified regulations, and with the requirements of regulations incorporated by reference; the Colorado Air Pollution Prevention and Control Act, Sections 25-7-110 and 25-7-110.5, C.R.S.; and the Air Quality Control Commission's ("Commission") Procedural Rules.

Basis

The State of Colorado is required under Section 112 of the Clean Air Act to adopt revisions to and new standards under 40 C.F.R. Part 61 into its regulations. This rulemaking amends the incorporation dates of subparts already incorporated by reference.

Specific Statutory Authority

Sections 25-7-105(1)(b) and 25-7-109(2)(h) and 109(4), C.R.S. authorize the Commission to adopt emission control regulations and emission control regulations relating to hazardous air pollutants, specifically.

Purpose

Adoption of federal amendments to standards in 40 C.F.R. Part 61 make revisions enforceable under Colorado law. Further, these revisions may include corrections of any typographical, grammatical, and formatting errors throughout the regulation.

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PART E Federal Maximum Achievable Control Technology (MACT)

I. General Provisions

The provisions of Part 63, Chapter I, Title 40, of the Code of Federal Regulations (CFR), promulgated by the U.S. Environmental Protection Agency listed in this section are hereby incorporated by reference by the Air Quality Control Commission and made a part of the Colorado Air Quality Control Commission Regulations. Materials incorporated by reference are those in existence as of the dates indicated and do not include later amendments. The material incorporated by reference is available for public inspection during regular business hours at the Office of the Commission, located at 4300 Cherry Creek Drive South, Denver, Colorado 80246. Parties wishing to inspect these materials should contact the Technical Secretary of the Commission, located at the Office of the Commission. The material incorporated by reference is also available through the United States Government Printing Office, online at www.gpo.gov/fdsys.

For the purpose of this section of this regulation, the word "Administrator" as used in the C.F.R. shall mean the Colorado Air Pollution Control Division. References to 40 CFR part 70 or operating permit issuance shall relate to the Colorado Operating Permit program contained in Colorado Regulation No. 3, Parts A and C. Operating permits issued under these general provisions shall be issued by the Colorado Air Pollution Control Division under Colorado Regulation No. 3, Parts A and C. The phrases "HAP", "HAPs" or "listed HAPs" shall mean those substances listed in Colorado Regulation No. 3, Appendix B.

Subpart A National Emission Standards for Hazardous Air Pollutants for Source Categories: General Provisions, 40 CFR Part 63 (July 1, ~~2013) as amended February 1, 2013 (78 FR 7488).~~2014).

For the purpose of this subpart A, the term “performance track member” shall mean a stationary source that is a member of both the U.S. Environmental Protection Agency’s National Environmental Performance Track and the Colorado Department of Public Health and Environment’s Environmental Leadership Program at the gold-level or higher.

II. Reserved

III. Federal Maximum Achievable Control Technology

The regulations promulgated by the U. S. Environmental Protection Agency listed in this section are hereby incorporated by reference by the Air Quality Control Commission and made a part of the Colorado Air Quality Control Commission Regulations. Materials incorporated by reference are those in existence as of the dates indicated and do not include later amendments. The material incorporated by reference is available for public inspection during regular business hours at the Office of the Commission, located at 4300 Cherry Creek Drive South, Denver, Colorado 80246, or may be examined at any state publications depository library. Parties wishing to inspect these materials should contact the Technical Secretary of the Commission, located at the Office of the Commission.

"Administrator" as used in the C. F. R. shall mean the Colorado Air Pollution Control Division.

Subpart F National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry, 40 C. F. R. Part 63, Subparts F (July 1, ~~2013~~2014).

Subpart G National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater, 40 C. F. R. Part 63, Subparts G (July 1, ~~2013~~2014).

Subpart H National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks, 40 C. F. R. Part 63, Subparts H (July 1, ~~2013~~2014).

Subpart I National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks, 40 C. F. R. Part 63, Subparts I (July 1, ~~2013~~2014).

Subpart J National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production, 40 C.F.R. Part 63, Subpart J (July 1, ~~2013~~2014).

Subpart M National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities, 40 C. F. R. Part 63, Subpart M (July 1, ~~2013~~2014). The owner or operator of any source required pursuant to 40 C.F.R. Part 63, Subpart M to obtain a Regulation No. 3, Part C Operating Permit, if not a major source or located at a major source as that term is defined at 40 C.F.R. Part 70.2, is permanently exempted from submitting an application for such permit as of December 19, 2005 (70 FR 75319).

Subpart N National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks, 40 C.F.R. Part 63, Subpart N (July 1, ~~2013~~2014). The owner or operator of any source required pursuant to 40 C.F.R. Part 63, Subpart N to obtain a Regulation No. 3, Part C Operating Permit, if not a major source or located at a major source as that term is defined at 40 C.F.R. Part 70.2, is permanently exempted from submitting an application for such permit as of December 19, 2005 (70 FR 75319).

Subpart O National Emission Standards for Hazardous Air Pollutants for Ethylene Oxide Sterilization and Fumigation Operations, 40 C.F.R. Part 63, Subpart O (July 1, ~~2013~~2014). The owner or operator of any source required pursuant to 40 C.F.R. Part 63, Subpart O to obtain a Regulation No. 3, Part C Operating Permit, if not a major source or located at a major source as that term is defined at 40 C.F.R. Part 70.2, is permanently exempted from submitting an application for such permit as of December 19, 2005 (70 FR 75319).

Subpart Q National Emissions Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers, 40 C.F.R. Part 63, Subpart Q (July 1, ~~2013~~2014).

Subpart R National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations), 40 C.F.R. Part 63, Subpart R (July 1, ~~2013~~2014).

Subpart S National Emission Standards for Hazardous Air Pollutants for Source Category: Pulp and Paper Production, 40 C.F.R. Part 63, Subpart S (July 1, ~~2013~~2014).

Subpart T National Emission Standards for Hazardous Air Pollutants: Halogenated Solvent Cleaning, 40 C.F.R. Part 63, Subpart T (July 1, ~~2013~~2014). The owner or operator of any source required pursuant to 40 C.F.R. Part 63, Subpart T to obtain a Regulation No. 3, Part C Operating Permit, if not a major source or located at a major source as that term is defined at 40 C.F.R. Part 70.2, is permanently exempted from submitting an application for such permit as of December 19, 2005 (70 FR 75319).

Subpart U National Emission Standards for Hazardous Air Pollutants: Group 1 Polymers and Resins, 40 C.F.R. Part 63, Subpart U (July 1, ~~2013~~2014).

Subpart W National Emissions Standards for Hazardous Air Pollutants: Epoxy Resins Production and Non-Nylon Polyamides Production, 40 C.F.R. Part 63, Subpart W (July 1, ~~2013~~2014).

Subpart X National Emissions Standards for Hazardous Air Pollutants from Secondary Lead Smelting, 40 C.F.R. Part 63, Subpart X (July 1, ~~2013) as amended January 3, 2014 (79 FR 367~~2014). The owner or operator of any source required pursuant to 40 C.F.R. Part 63, Subpart X to obtain a Regulation No. 3, Part C Operating Permit, if not a major source or located at a major source as that term is defined at 40 C.F.R. Part 70.2, is deferred from submitting an application for such permit until December 9, 2005.

Subpart AA National Emission Standards for Hazardous Air Pollutants for Source Category: Phosphoric Acid Manufacturing and Phosphate Fertilizers Production, 40 C.F.R. Part 63, Subpart AA (July 1, ~~2013~~2014).

Subpart CC National Emission Standards for Hazardous Air Pollutants: Petroleum Refineries, 40 C.F.R. Part 63, Subpart CC (July 1, ~~2013~~2014).

Subpart DD National Emission Standards for Hazardous Air Pollutants: Off-Site Waste and Recovery Operations, 40 C.F.R. Part 63, Subpart DD (July 1, ~~2013).~~2014), as amended March 18, 2015 (80 Fed. Reg. 14271).

Subpart EE National Emission Standards for Hazardous Air Pollutants Final Standards for Hazardous Air Pollutant Emissions from Magnetic Tape Manufacturing Operations, 40 C.F.R. Part 63, Subpart EE (July 1, ~~2013~~2014).

Subpart GG National Emission Standards for Hazardous Air Pollutants for Source Categories: Aerospace Manufacturing and Rework Facilities, 40 C.F.R. Part 63, Subpart GG (July 1, ~~2013~~2014).

Subpart HH National Emission Standards for Hazardous Air Pollutants for Source Category: Oil and Natural Gas Production and Natural Gas Transmission and Storage, 40 C.F.R. Part 63, Subparts HH (July 1, ~~2013~~2014).

Subpart II National Emission Standards for Hazardous Air Pollutants: Shipbuilding and Ship Repair, 40 C.F.R. Part 63, Subpart II (July 1, ~~2013~~2014).

Subpart JJ National Emission Standards for Hazardous Air Pollutants: Wood Furniture Manufacturing Operations, 40 C.F.R. Part 63, Subpart JJ (July 1, ~~2013~~2014).

Subpart KK National Emission Standards for Hazardous Air Pollutants: Printing and Publishing Industry, 40 C.F.R. Part 63, Subpart KK (July 1, ~~2013~~2014).

Subpart LL National Emission Standards for Hazardous Air Pollutants for Source Category: Primary Aluminum Reduction Plants, 40 C.F.R. Part 63, Subpart LL (July 1, ~~2013~~2014).

Subpart MM National Emission Standards for Hazardous Air Pollutants for Source Category: Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-alone Semi-chemical Pulp Mills, 40 C.F.R. Part 63, Subpart MM (July 1, ~~2013~~2014).

Subpart OO National Emission Standards for Tanks - Level 1, 40 C.F.R., Part 63, Subpart OO (July 1, ~~2013~~2014).

Subpart PP National Emission Standards for Containers, 40 C.F.R., Part 63, Subpart PP (July 1, ~~2013~~2014).

Subpart XX National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations, 40 C.F.R. Part 63, Subpart XX (July 1, ~~2013~~2014).

Subpart YY National Emission Standards for Hazardous Air Pollutants for Source Category: Generic Maximum Achievable Control Technology Standard for Acetal Resins Production, Acrylic and Modacrylic Fiber Production, Hydrogen Fluoride Production, and Polycarbonate(s) Production, 40 C.F.R. Part 63, Subpart YY (July 1, ~~2013).~~2014), as amended October 8, 2014 (79 Fed. Reg. 60922).

Subpart CCC National Emission Standards for Hazardous Air Pollutants for Source Category: Steel Pickling-HCL Process Facilities and Hydrochloric Acid Regeneration Plants, 40 C.F.R. Part 63, Subpart CCC (July 1, ~~2013~~2014).

Subpart DDD National Emission Standards for Hazardous Air Pollutants for Source Category: Mineral Wool Production, 40 C.F.R. Part 63, Subpart DDD (July 1, ~~2013~~2014).

Subpart EEE National Emission Standards for Hazardous Air Pollutants for Source Category: Hazardous Waste Combustors, 40 C.F.R. Part 63, Subpart EEE (July 1, ~~2013~~2014).

Subpart GGG National Emission Standards for Hazardous Air Pollutants for Source Category: Pharmaceuticals Production, 40 C.F.R. Part 63, Subpart GGG (July 1, ~~2013~~2014).

Subpart HHH National Emission Standards for Hazardous Air Pollutants for Source Category: Oil and Natural Gas Production and Natural Gas Transmission and Storage, 40 C.F.R. Part 63, Subparts HHH (July 1, ~~2013~~2014).

Subpart III National Emission Standards for Hazardous Air Pollutants for Source Category: Flexible Polyurethane Foam Production, 40 C.F.R. Part 63, Subpart III (July 1, ~~2013).~~2014), as amended August 15, 2014 (79 Fed. Reg. 48086).

Subpart JJJ National Emission Standards for Hazardous Air Pollutants: Group IV Polymers and Resins, 40 C.F.R. Part 63, Subpart JJJ (July 1, ~~2013~~2014).

Subpart LLL National Emission Standards for Hazardous Air Pollutants for Source Category: Portland Cement Manufacturing, 40 C.F.R. Part 63, Subpart LLL (July 1, ~~2013~~2014).

Subpart MMM National Emission Standards for Hazardous Air Pollutants for Source Category: Pesticide Active Ingredient Production, 40 C.F.R. Part 63, Subpart MMM (July 1, ~~2013~~2014).

Subpart NNN National Emission Standards for Hazardous Air Pollutants for Source Category: Wool Fiberglass Manufacturing, 40 C.F.R. Part 63, Subpart NNN (July 1, ~~2013~~2014).

Subpart OOO National Emission Standards for Hazardous Air Pollutants for Source Category: Amino/Phenolic Resins Production, 40 C.F.R. Part 63, Subpart OOO (July 1, ~~2013).~~2014), as amended October 8, 2014 (79 Fed. Reg. 60922).

Subpart PPP National Emission Standards for Hazardous Air Pollutants for Source Category: Polyether Polyols Production, 40 C.F.R. Part 63, Subpart PPP (July 1, ~~2013~~2014).

Subpart QQQ National Emission Standards for Hazardous Air Pollutants for Primary Copper, 40 C.F.R. Part 63, Subpart QQQ (July 1, ~~2013~~2014).

Subpart RRR National Emission Standards for Hazardous Air Pollutants for Source Category: Secondary Aluminum Production, 40 C.F.R. Part 63, Subpart RRR (July 1, 2007). The owner or operator of any source required pursuant to 40 C.F.R. Part 63, Subpart RRR to obtain a Regulation No. 3., Part C Operating Permit, if not a major source or located at a major source as that term is defined at 40 C.F.R. Part 70.2, is permanently exempted from submitting an application for such permit as of December 19, 2005 (70 FR 75319).

Subpart TTT National Emission Standards for Hazardous Air Pollutants for Source Category: Primary Lead Smelting, 40 C.F.R. Part 63, Subpart TTT (July 1, ~~2013~~2014).

Subpart UUU National Emission Standards for Hazardous Air Pollutants for Catalytic Cracking Units, Catalytic Reforming Units and Sulfur Plants at Petroleum Refineries, 40 C.F.R. Part 63, Subpart UUU (July 1, ~~2013~~2014).

Subpart VVV National Emission Standards for Hazardous Air Pollutants for Source Category: Publicly Owned Treatment Works, 40 C.F.R. Part 63, Subpart VVV (July 1, ~~2013~~2014).

Subpart XXX National Emission Standards for Hazardous Air Pollutants for Source Category: Ferroalloys Production: Ferromanganese and Silicomanganese, 40 C.F.R. Part 63, Subpart XXX (July 1, ~~2013~~2014).

Subpart AAAA National Emission Standards for Hazardous Air Pollutants for Municipal Solid Waste Landfills, 40 C.F.R. Part 63, Subpart AAAA (July 1, ~~2013~~2014).

Subpart CCCC National Emission Standards for Hazardous Air Pollutants for Source Category: Manufacturing of Nutritional Yeast, 40 C.F.R. Part 63, Subpart CCCC (July 1, ~~2013~~2014).

Subpart DDDD National Emissions Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products, 40 C.F.R. Part 63, Subpart DDDD (July 1, ~~2013~~2014).

Subpart EEEE National Emissions Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline), 40 C.F.R. Part 63, Subpart EEEE (July 1, ~~2013~~2014).

Subpart FFFF National Emissions Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing, 40 C.F.R. Part 63, Subpart FFFF (July 1, ~~2013~~2014).

Subpart GGGG National Emission Standards for Hazardous Air Pollutants for Source Category: Solvent Extraction for Vegetable Oil Production, 40 C.F.R. Part 63, Subpart GGGG (July 1, ~~2013~~2014).

Subpart HHHH National Emission Standards for Hazardous Air Pollutants for Wet Formed Fiberglass Mat Production, 40 C.F.R. Part 63, Subpart HHHH (July 1, ~~2013~~2014).

Subpart IIII National Emissions Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks, 40 C.F.R. Part 63, Subpart IIII (July 1, ~~2013~~2014).

Subpart JJJJ National Emission Standards for Hazardous Air Pollutants for Paper and Other Web Coating, 40 C.F.R. Part 63, Subpart JJJJ (July 1, ~~2013~~2014).

Subpart KKKK National Emissions Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans, 40 C.F.R. Part 63, Subpart KKKK (July 1, ~~2013~~2014).

Subpart MMMM National Emissions Standards for Hazardous Air Pollutants: Surface Coating of Miscellaneous Metal Parts and Products, 40 C.F.R. Part 63, Subpart MMMM (July 1, ~~2013~~2014).

Subpart NNNN National Emission Standards for Hazardous Air Pollutants for Large Appliance Manufacturing, 40 C.F.R. Part 63, Subpart NNNN (July 1, ~~2013~~2014).

Subpart OOOO National Emission Standards for Hazardous Air Pollutants for Printing, Coating, and Dyeing of Fabrics and Other Textiles, 40 C.F.R. Part 63, Subpart OOOO (July 1, ~~2013~~2014).

Subpart PPPP National Emissions Standards for Hazardous Air Pollutants: Surface Coating of Plastic Parts and Products, 40 C.F.R. Part 63, Subpart PPPP (July 1, ~~2013~~2014).

Subpart QQQQ National Emission Standards for Hazardous Air Pollutants for Surface Coating of Wood Building Products, 40 C.F.R. Part 63, Subpart QQQQ (July 1, ~~2013~~2014).

Subpart RRRR National Emission Standards for Hazardous Air Pollutants for Surface Coating of Metal Furniture, 40 C.F.R. Part 63, Subpart RRRR (July 1, ~~2013~~2014).

Subpart SSSS National Emission Standards for Hazardous Air Pollutants for Surface Coating of Metal Coil, 40 C.F.R. Part 63, Subpart SSSS (July 1, ~~2013~~2014).

Subpart TTTT National Emission Standards for Hazardous Air Pollutants for Leather Finishing Operations, 40 C.F.R. Part 63, Subpart TTTT (July 1, ~~2013~~2014).

Subpart UUUU National Emission Standards for Hazardous Air Pollutants for Cellulose Production Manufacturing, 40 C.F.R. Part 63, Subpart UUUU (July 1, ~~2013~~2014).

Subpart VVVV National Emission Standards for Hazardous Air Pollutants for Boat Manufacturing, 40 C.F.R. Part 63, Subpart VVVV (July 1, ~~2013~~2014).

Subpart WWWW National Emission Standards for Hazardous Air Pollutants for Reinforced Plastic Composites Production, 40 C.F.R. Part 63, Subpart WWWW (July 1, ~~2013~~2014).

Subpart XXXX National Emission Standards for Hazardous Air Pollutants for Tire Manufacturing, 40 C.F.R. Part 63, Subpart XXXX (July 1, ~~2013~~2014).

Subpart YYYY National Emissions Standards for Hazardous Air Pollutants for Stationary Combustion Turbines, 40 C.F.R. Part 63, Subpart YYYY (July 1, ~~2013~~2014).

Subpart ZZZZ National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines, 40 C.F.R. Part 63, Subpart ZZZZ (July 1, 2007).

Subpart AAAAA National Emissions Standards for Hazardous Air Pollutants for Lime Manufacturing Plants, 40 C.F.R. Part 63, Subpart AAAAA (July 1, ~~2013~~2014).

Subpart BBBBB National Emission Standards for Hazardous Air Pollutants for Semiconductor Manufacturing, 40 C.F.R. Part 63, Subpart BBBBB (July 1, ~~2013~~2014).

Subpart CCCCC National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, 40 C.F.R. Part 63, Subpart CCCCC (July 1, ~~2013~~2014).

Subpart DDDDD National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters, 40 C.F.R. Part 63, Subpart DDDDD (July 1, ~~2013~~2014).

Subpart EEEEE National Emissions Standards for Hazardous Air Pollutants for Iron and Steel Foundries, 40 C.F.R. Part 63, Subpart EEEEE (July 1, ~~2013~~2014).

Subpart FFFFF National Emission Standards for Hazardous Air Pollutants for Integrated Iron and Steel Manufacturing, 40 C.F.R. Part 63, Subpart FFFFF (July 1, ~~2013~~2014).

Subpart GGGGG National Emission Standards for Hazardous Air Pollutants: Site Remediation, 40 C.F.R. Part 63, Subpart GGGGG (July 1, ~~2013~~2014).

Subpart HHHHH National Emissions Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing, 40 C.F.R. Part 63, Subpart HHHHH (July 1, ~~2013~~2014).

Subpart IIIII National Emissions Standards for Hazardous Air Pollutants: Mercury Emissions from Mercury Cell Chlor-Alkali Plants, 40 C.F.R. Part 63, Subpart IIIII (July 1, ~~2013~~2014).

Subpart JJJJJ Repealed - Reserved for National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Manufacturing, 40 C.F.R. Part 63, Subpart JJJJJ. This federal rule was vacated by a March 13, 2007 decision of the U.S. Court of Appeals for the District of Columbia Circuit.

Subpart KKKKK Repealed - Reserved for National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing, 40 C.F.R. Part 63, Subpart KKKKK This federal rule was vacated by a March 13, 2007 decision of the U.S. Court of Appeals for the District of Columbia Circuit.

Subpart LLLLL National Emission Standards for Hazardous Air Pollutants for Asphalt Processing and Asphalt Roofing Manufacturing, 40 C.F.R. Part 63, Subpart LLLLL (July 1, ~~2013~~2014).

Subpart MMMMM National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Fabrication, 40 C.F.R. Part 63, Subpart MMMMM (July 1, ~~2013~~2014).

Subpart NNNNN National Emission Standards for Hazardous Air Pollutants for Hydrochloric Acid Production, 40 C.F.R. Part 63, Subpart NNNNN (July 1, ~~2013~~2014).

Subpart PPPPP National Emission Standards for Hazardous Air Pollutants for Engine Test Cells/Stands, 40 C.F.R. Part 63, Subpart PPPPP (July 1, ~~2013~~2014).

Subpart QQQQQ National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities, 40 C.F.R. Part 63, Subpart QQQQQ (July 1, ~~2013~~2014).

Subpart RRRRR National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing, 40 C.F.R. Part 63, Subpart RRRRR (July 1, ~~2013~~2014).

Subpart SSSSS National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing, 40 C.F.R. Part 63, Subpart SSSSS (July 1, ~~2013~~2014).

Subpart TTTTT National Emissions Standards for Hazardous Air Pollutants for Primary Magnesium Refining, 40 C.F.R. Part 63, Subpart TTTTT (July 1, ~~2013~~2014).

Subpart WWWWW National Emission Standards for Hospital Ethylene Oxide Sterilizers, 40 C.F.R. Part 63, Subpart WWWWW (July 1, ~~2013~~2014).

Subpart YYYYY National Emission Standards for Hazardous Air Pollutants for Area Sources: Electric Arc Furnace Steelmaking Facilities, 40 C.F.R. Part 63, Subpart YYYYY (July 1, ~~2013~~2014).

Subpart ZZZZZ National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries Area Sources, 40 C.F.R. Part 63, Subpart ZZZZZ (July 1, ~~2013~~2014).

Subpart DDDDDD National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production Area Sources, 40 C.F.R. Part 63, Subpart DDDDDD (July 1, ~~2013).~~2014), as amended February 4, 2015 (79 Fed. Reg. 5940).

Subpart EEEEEE National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting Area Sources, 40 C.F.R. Part 63, Subpart EEEEEE (July 1, ~~2013~~2014).

Subpart FFFFFF National Emission Standards for Hazardous Air Pollutants: Secondary Copper Smelting, 40 C.F.R. Part 63, Subpart FFFFFF (July 1, ~~2013~~2014).

Subpart GGGGGG National Emission Standards for Hazardous Air Pollutants for Area Sources: Primary Nonferrous Metals: Zinc, Cadmium, and Berylium, 40 C.F.R. Part 63, Subpart GGGGGG (July 1, ~~2013~~2014).

Subpart LLLLLL National Emission Standards for Hazardous Air Pollutants for area sources: Acrylic and Modacrylic Fibers Production, 40 C.F.R. Part 63, Subpart LLLLLL (July 1, ~~2013~~2014).

Subpart MMMMMM National Emission Standards for Hazardous Air Pollutants for area sources: Carbon Black Production, 40 C.F.R. Part 63, Subpart MMMMMM (July 1, ~~2013~~2014).

Subpart NNNNNN National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing area sources: Chromium Compounds, 40 C.F.R. Part 63, Subpart NNNNNN (July 1, ~~2013~~2014).

Subpart OOOOOO National Emission Standards for Hazardous Air Pollutants for area sources: Flexible Polyurethane Foam Production and Fabrication, 40 C.F.R. Part 63, Subpart OOOOOO (July 1, ~~2013~~2014).

Subpart PPPPPP National Emission Standards for Hazardous Air Pollutants for area sources: Lead Acid Battery Manufacturing, 40 C.F.R. Part 63, Subpart PPPPPP (July 1, ~~2013~~2014).

Subpart QQQQQQ National Emission Standards for Hazardous Air Pollutants for area sources: Wood Preserving, 40 C.F.R. Part 63, Subpart QQQQQQ (July 1, ~~2013~~2014).

Subpart TTTTTT National Emission Standards for Hazardous Air Pollutants for Secondary Nonferrous Metals Processing Area Sources, 40 C.F.R. Part 63, Subpart TTTTTT (July 1, ~~2013~~2014).

Subpart UUUUU National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units, 40 C.F.R. Part 63, Subpart UUUUU (July 1, ~~2014)~~as amended March 24, 2015 (80 Fed. Reg. 15514).

(See Regulation Number 6, Part A, Subpart Da and Part B, Section VIII. for additional requirements regarding Electric Utility Steam Generating Units)

Subpart ZZZZZZ National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Aluminum, Copper and Other Nonferrous Foundries, 40 C.F.R. Part 63, Subpart ZZZZZZ (July 1, ~~2013~~2014).

Subpart HHHHHHH National Emission Standards for Hazardous Air Pollutant Emissions for Polyvinyl Chloride and Copolymers Production, 40 C.F.R. Part 63, Subpart HHHHHHH (July 1, ~~2013~~2014).

IV. Air Pollution Permits To Limit the Potential to Emit Hazardous Air Pollutants

IV.A. Applicability

IV.A.1. Sources may voluntarily apply for permit conditions to limit the source's potential to emit hazardous air pollutants in accordance with this section IV and the procedural provisions of the Construction or Operating Permit programs in Regulation No. 3.

IV.A.2. Under this section IV, a source may apply for and obtain state-only or federally enforceable permit limits, as appropriate, for selected emissions units or for all units that emit hazardous air pollutants. However, the Division shall not indicate in this permit that the source is exempt from specific provisions of the Federal or state Acts unless all relevant emissions units and pollutants are included in the permit review.

IV.A.3. The Division shall issue permits to limit the potential to emit hazardous air pollutants to applicants who qualify pursuant to this section IV and the procedural provisions of Regulation No. 3.

IV.A.4. A source that has initially avoided regulation as a major source under this regulation or Regulation No. 3 by limiting its potential to emit, but that subsequently

IV.A.4.a. becomes an affected source, as defined in section I of this Regulation, because an applicable standard established pursuant to section 112 of the Federal Act establishes a lower threshold, shall meet the applicable standard unless it has obtained a reviewed permit that limits its potential to emit below the federally established threshold; or

IV.A.4.b. becomes subject to a standard promulgated under section 25-7-109.3, C.R.S., must meet the applicable standard unless it has obtained a revised permit that limits its potential to emit below the trigger threshold for the Colorado standard.

IV.B. Permits

IV.B.1. The owner or operator of a source with emissions of hazardous air pollutants may apply for a permit under this regulation in order to voluntarily limit hazardous air pollutant emissions below emissions thresholds requested in the application by means of practically enforceable permit conditions.

IV.B.2. The permit shall include practically enforceable permit conditions necessary to limit emissions of hazardous air pollutants below emissions thresholds requested in the application and

IV.B.2.a. operating and maintenance plans for all control equipment and control practices necessary to comply with such permit conditions and

IV.B.2.b. a proposed recordkeeping format for demonstrating compliance on an ongoing basis with such permit conditions.

IV.B.3. All emission limitations, controls, and other requirements that are imposed by the permit shall be at least as stringent as any applicable requirements contained in the Colorado State Implementation Plan or enforceable hereunder; no permit issued under this section IV may waive, or make less stringent, any limitations or requirements that are contained in or issued pursuant to the State Implementation Plan or that are otherwise federally enforceable.

IV.B.4. The permit may include alternative operating scenarios that shall include specific monitoring, recordkeeping, and reporting methods.

IV.C. Permit Application Requirements

IV.C.1. An application for a permit to limit the potential to emit hazardous air pollutants shall be prepared on forms supplied by the Division, which shall be consistent with this section IV.

IV.C.2. The applicant shall furnish all information and data required by the Division to evaluate the permit application and make its preliminary analysis in accordance with this section IV and the procedural provisions of Regulation NO. 3, Part B, including, but not limited to:

IV.C.2.a. an operating and maintenance plan for all control equipment and control practices necessary to limit emissions of hazardous air pollutants below emissions thresholds requested in the application; and

IV.C.2.b. a proposed recordkeeping format for demonstrating compliance on an ongoing basis with permit conditions necessary to limit emissions of hazardous air pollutants below emissions thresholds requested in the application.

IV.C.3. The applicant may propose permit conditions and alternative operating scenarios.

IV.C.4. Emissions calculations or determinations shall include fugitive emissions of federal hazardous air pollutants as defined in Appendix A of this regulation.

IV.C.5. The Division may, for the purpose of assuring state-only or federal and practical enforceability, require additional or different permit conditions than proposed by the permit applicant; however, the applicant may decline to accept the conditions and elect instead to forgo limits on its potential to emit or pursue any right of appeal or other available alternative.

IV.D. Public Participation Requirement

Permits processed under this regulation are subject to the public comment requirements of Regulation No. 3, Part B, section IV.C.

IV.E. If a source qualifies for a permit under this section IV and concurrently qualifies for a permit to limit its potential to emit criteria pollutants under Regulation No. 3, the Division may issue a single permit to achieve both purposes. Nothing herein

shall restrict a source's right to obtain a permit under Regulation No. 3, which limits its potential to emit both criteria pollutants and hazardous air pollutants.

IV.F. Modification or Reopening of the Permit

A permit issue pursuant to this section IV does not excuse a source from any obligation to apply for a permit modification or comply with any applicable requirements arising from changed circumstances, unless the permit authorizes the activity or change.

IV.G. Compliance on an ongoing basis

Failure to assure compliance on an ongoing basis with the permit conditions shall be grounds for an enforcement action.

~~IV.H. Interim Federal Enforceability Procedure (in effect until EPA provides written approval of these rules)~~

~~IV.H.1. Until such time as EPA approves the state rules, the source shall comply with this section in order to make the permit federally enforceable.~~

~~IV.H.2. After the Division issues a permit to limit the potential to emit hazardous air pollutants to a source that emits federal hazardous air pollutants, the responsible official for the source shall submit to EPA and the Division a written statement on a form supplied by the Division, certifying that the source is in compliance with all permit conditions and that the source accepts Federal and citizen enforcement of the conditions contained in the permit.~~

~~IV.H.3. The permit becomes federally enforceable when EPA receives the signed statement required by this section IV.H.~~

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VI. Statements of Basis, Specific Statutory Authority and Purpose for Part E

VI.GG. Adopted: August 20, 2015

Incorporation by reference of federal rules and amendments to federal standards in 40 C.F.R. Part 63 into Regulation Number 8, Part E.

This Statement of Basis, Specific Statutory Authority, and Purpose complies with the requirements of the Colorado Administrative Procedure Act Sections 24-4-103, C.R.S. and the Colorado Air Pollution Prevention and Control Act Sections 25-7-110 and 25-7-110.5, C.R.S., and the Air Quality Control Commission's ("Commission") Procedural Rules.

Basis

The EPA promulgated new standards in 40 C.F.R. Part 63, Subparts A, G, N, O, DD, GG, YY, III, GGG, JJJ, MMM, OOO, PPP, RRR, UUU, CCCC, UUUUU, ZZZZZ and DDDDDD. The State of Colorado is required under Section 112 of the Clean Air Act to adopt such revisions and new standards into its regulations. Additionally, on April 26, 1996, Colorado submitted revisions to the hazardous air pollutant requirements in Regulation Number 8, Part E in order to create federally enforceable limits on HAPs, for both new and existing sources, through the State's construction permit program. This

interim federal enforceability was to be in place until such time as EPA approved these revisions under CAA Section 112(l). EPA approved the April 26, 1996 revisions effective February 20, 2001 (*65 Fed. Reg 79750*) thereby rendering permits issued under Regulation 8 federally enforceable. Because EPA approved these revisions, the interim federal enforceability provision in Subpart IV.H is no longer necessary and can be removed from Regulation 8, Part E. This rulemaking incorporates by reference these revisions and it removes the interim federal enforceability provision that is no longer necessary.

Authority

Sections 25-7-105(1)(b) and 25-7-109(2)(h) and 25-7-109(4), C.R.S. authorize the Commission to adopt emission control regulations and emission control regulations relating to hazardous air pollutants, respectively.

Purpose

Adoption of the federal rules and amendments to federal standards in 40 C.F.R. Part 63, Subparts A, G, N, O, DD, GG, YY, III, GGG, JJJ, MMM, OOO, PPP, RRR, UUU, CCCC, UUUUU, ZZZZZ and DDDDDD make these rules and revisions enforceable under Colorado law.

Further, these revisions may correct typographical, grammatical, and formatting errors throughout the regulation.

COLORADO
Air Quality Control Commission
Department of Public Health & Environment

NOTICE OF WRITTEN COMMENT ONLY RULEMAKING HEARING

Regarding proposed revisions to:

Regulation Number 8, Parts A and E

SUBJECT:

The Air Quality Control Commission will hold a rulemaking hearing to consider revisions to Regulation Number 8, Parts A and E to incorporate by reference changes the EPA made to its National Emission Standards for Hazardous Air Pollutants rules.

All required documents for this rulemaking can be found on the Commission website at: https://www.colorado.gov/pacific/cdphe/aqcc

HEARING SCHEDULE:

DATE: August 20, 2015
TIME: 9:00 AM
PLACE: Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South, Sabin Conference Room
Denver, CO 80246

PUBLIC COMMENT:

This is a written comment only rulemaking hearing. The Commission encourages all interested persons to provide their views in writing prior to or at the hearing. The Commission especially solicits comments and analyses from persons who will incur directly some cost or benefit from the proposed revisions. Written and/or electronic submissions should be received in the Commission Office by August 4, 2015 to allow for advance review by the Commission. No testimony will be taken at the hearing except for good cause shown.

Information should be printed and include: your name, address, phone number, email address, and the name of the group that you may be representing if applicable.

Written submissions should be mailed to:
Colorado Air Quality Control Commission
Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South, EDO-AQCC-A5
Denver, Colorado 80246

Email submissions should be emailed to: cdphe.aqcc-comments@state.co.us

STATUTORY AUTHORITY FOR THE COMMISSION'S ACTIONS:

Sections 25-7-105(1)(b) and 25-7-109(2)(h) and 109(4), C.R.S. authorize the Commission to adopt emission control regulations and emission control regulations relating to hazardous air pollutants, specifically.

The rulemaking hearing will be conducted in accordance with Sections 24-4-103 and 25-7-110, 110.5 and 110.8 C.R.S., as applicable and amended, the Commission's Procedural Rules, and as otherwise stated in this notice. This list of statutory authority is not intended as an exhaustive list of the Commission's statutory authority to act in this matter.

Dated this 22nd day of May 2015 at Denver, Colorado

Colorado Air Quality Control Commission

Michael Silverstein, Administrator

Notice of Proposed Rulemaking

Tracking number

2015-00307

Department

1000 - Department of Public Health and Environment

Agency

1006 - Health and Environmental Information and Statistics Division - promulgated by Colo Bd of Health

CCR number

5 CCR 1006-1

Rule title

VITAL STATISTICS

Rulemaking Hearing

Date

07/15/2015

Time

10:00 AM

Location

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

Subjects and issues involved

To consider the promulgation of revisions to 5 CCR 1006-1, Vital Statistics.

Statutory authority

C.R.S § 25-2-103 through § 25-2-105

Contact information

Name

Ron Hyman

Title

State Registrar

Telephone

303-692-2164

Email

ronald.hyman@state.co.us

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: Ron Hyman, State Registrar

Through: Dana Erpelding, Director, CHED DE

Date: April 30, 2015

Subject: **Request for Rulemaking Hearing**
Proposed Amendments to 5 CCR 1006-1, Colorado Vital Statistics Regulations with a request for the rulemaking hearing to occur in July 2015

The Office of the State Registrar of Vital Statistics is proposing changes to the Vital Statistics regulations to include language encouraging the use of electronic registration of vital events. The Office of the State Registrar is in the process of implementing an Electronic Death Registration System. This system complements the existing Electronic Birth Registration System. Electronic registration of vital events provides efficiency and reduced costs for local reporting sources, the benefits of real time edit checks to reduce errors and improve data quality, and faster availability of records to our citizens. Other states that have implemented such systems report some reluctance to adopting new technology among some reporting entities. As the number of entities reporting vital events electronically continues to increase, the more the user community, and our citizens will benefit, as the data will be routed more efficiently, providing birth and death certificates to families quickly, and the data will be of higher quality, reducing the need to correct errors. As we build capacity and knowledge levels in the user communities, the Office of the State Registrar of Vital Statistics would like to eventually require the electronic submission of vital events data in the vast majority of cases.

MODIFICATION TO SECTION 2.1 FORMS
The proposed modification clarifies that only electronic registration system software approved by the state registrar shall be used in the electronic reporting of vital events.

MODIFICATION TO SECTION 2.2 REQUIREMENTS FOR PREPARATION OF CERTIFICATES
The proposed modification provides reporting entities with the option of providing data on paper or by using the current version of the electronic registration system approved by the state registrar. This modification states that use of the approved electronic registration system is the preferred method to be used in most circumstances.

STATEMENT OF BASIS AND PURPOSE
AND SPECIFIC STATUTORY AUTHORITY
for Amendments to
5 CCR 1006-1, Colorado Vital Statistics Regulations

Basis and Purpose.
The proposed changes promote the use of electronic registration of vital events by including language in the regulations to encourage reporting entities, such as hospitals, funeral homes and coroners, to submit vital event data electronically. Electronic registration provides the benefits of real time edit checks resulting in higher data quality, lowers the cost of data reporting to the majority of users, and improves the timeliness of issuing birth and death certificates to families.

Specific Statutory Authority.
These rules are promulgated pursuant to the following statutes: C.R.S. 25-2-103 through 25-2-105.

SUPPLEMENTAL QUESTIONS

Is this rulemaking due to a change in state statute?

_____ Yes, the bill number is _____; rules are ___ authorized ___ required.
___X___ No

Is this rulemaking due to a federal statutory or regulatory change?

_____ Yes
___X___ No

Does this rule incorporate materials by reference?

_____ Yes
___X___ No

Does this rule create or modify fines or fees?

_____ Yes
___X___ No

REGULATORY ANALYSIS
for Amendments to
5 CCR 1006-1, Colorado Vital Statistics Regulations

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.**
Electronic registration impacts hospitals, physicians, funeral homes, coroners, local vital records offices, and clerk and recorder offices. As the electronic registration system software is provided free of charge to these entities, the cost is estimated to be minimal (training, computer purchase, etc).

   Families and citizens needing certified copies of vital records will benefit from higher quality documents needing fewer corrections, by wider availability of documents, and by more timely availability of documents.

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.**
Funeral homes will no longer need to employ staff to transport pieces of paper (the physical death certificate) to doctor's offices, coroners, and local health departments. This often involves multiple trips. The savings will be from staff time, transportation costs, and having to drop off the paper and pick it back up the following business day.

3. **The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.**
The state has made a significant investment in electronic registration systems, the full benefit of which will come with significant adoption by the key players associated with each event type (birth and death).

4. **A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.**
Experience from other states suggests that adoption by user agencies will be slower without added incentive to fully utilize the systems.

5. **A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.**
The proposed language encourages participation by all parties. If this does not lead to significant adoption levels, then the agency will consider proposing stronger language mandating usage in most common situations.

6. **Alternative Rules or Alternatives to Rulemaking Considered and Why Rejected.**
Voluntary participation is preferable, but the experience in other states suggests this may not be sufficient to achieve the levels of adoption necessary to realize the full benefits of electronic registration.

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.**
Over thirty states have adopted some form of electronic registration of vital events. Adoption rates have ranged from miniscule to over 80%. In discussions with other state registrars, the common theme is that the stronger the encouragement of users to participate, the higher and faster the rate of participation is.

STAKEHOLDER COMMENTS
for Amendments to
5 CCR 1006-1, Colorado Vital Statistics Regulations

The following individuals and/or entities were included in the development of these proposed rules:

Other State Registrars, National Association for Public Health Statistics and Information Services, National Center for Health Statistics, Colorado Funeral Directors Association, Colorado Funeral Services Board

The following individuals and/or entities were notified that this rule-making was proposed for consideration by the Board of Health:

Colorado Funeral Directors Association, Colorado Coroners Association, local Vital Record Offices

The Division will also be reaching out to the Colorado Hospital Association, county clerks and recorders and the Colorado Medical Society in May 2015.

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.

Funeral directors are in favor of mandating usage as they encounter significant issues with physician offices.

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?

This proposal would provide benefits to all Colorado families.

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Health and Environmental Information and Statistics Division

Vital Statistics

5 CCR 1006-1

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SECTION 2. DUTIES OF STATE REGISTRAR (25-2-103 THROUGH 25-2-105)

Section 2.1 Forms

All forms, certificates, and reports used in the system of vital statistics are the property of the Office of the State Registrar of Vital Statistics and shall be surrendered to the State Registrar of Vital Statistics - hereinafter referred to as “State Registrar” - upon demand. The forms prescribed and distributed by the State Registrar for reporting vital statistics shall be used only for official purposes. Only those forms furnished or approved by the State Registrar shall be used in the reporting of vital statistics or in making copies thereof. ONLY ELECTRONIC REGISTRATION SYSTEM SOFTWARE APPROVED BY THE STATE REGISTRAR SHALL BE USED IN THE ELECTRONIC REPORTING OF VITAL EVENTS.

Section 2.2 Requirements for Preparation of Certificates

All certificates and records relating to vital statistics must be prepared on a typewriter with a black ribbon, on a letter - quality printer with black ink or printed legibly in black, unfading ink, OR USING THE ELECTRONIC REGISTRATION SYSTEM APPROVED BY THE STATE REGISTRAR. USE OF AN APPROVED ELECTRONIC REGISTRATION SYSTEM IS THE PREFERRED METHOD TO BE USED IN MOST CIRCUMSTANCES. All signatures required shall be entered in black, unfading ink. Unless otherwise directed by the State Registrar, no certificate shall be complete and correct and acceptable for registration:

(a) That does not have the certifier’s name typed or printed legibly under his signature;

(b) That does not supply all items of information called for thereon or satisfactorily account for their omission;

(c) That contains alterations or erasures;

(d) That does not contain handwritten signatures as required;

(e) That is marked “copy” or “duplicate” ;

(f) That is a carbon copy;

(g) That is prepared on an improper form;

(h) That contains improper or inconsistent data;

(i) That contains an indefinite cause of death which denotes only symptoms of disease or conditions resulting from disease;

(j) That is not in English or contains non-English symbols;

(k) That is not prepared in conformity with regulations or instructions issued by the State Registrar.

COLORADO
Board of Health
Department of Public Health & Environment

Notice of Public Rule-Making Hearing

Scheduled for July 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 July 15, 2015 at 10 a.m. in the Sabin-Cleere Conference Room of the Colorado Department of Public Health and Environment, Bldg. A, First Floor, 4300 Cherry Creek Drive, South, Denver, CO 80246, to consider the promulgation of revisions to 5 CCR 1006-1, Vital Statistics. The proposed rules have been developed by the Center for Health and Environmental Data Division of the Colorado Department of Public Health and Environment pursuant to C.R.S § 25-2-103 through § 25-2-105.

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 seven (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 (5) working days prior to the hearing. Copies of the proposed rules may be obtained by contacting the Colorado Department of Public Health and Environment, Center for Health and Environmental Data Division, 4300 Cherry Creek Drive S., Denver, CO 80246, (303) 692-2164.

The Board encourages all interested persons to participate in the hearing by providing written data, views, or comments, or by making oral comments at the hearing. At the discretion of the Chair, oral testimony at the hearing may be limited to three minutes or less depending on the number of persons wishing to comment. Pursuant to 6 CCR 1014-8, §3.02.1, written testimony must be submitted no later than five (5) calendar days prior to the rulemaking hearing. Written testimony is due by 5:00 p.m., Thursday, July 9, 2015. Persons wishing to submit written comments should submit them to: Colorado Board of Health, ATTN: Jamie L. Thornton, Program Assistant, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South EDO-A5, Denver, Colorado 80246-1530 or by e-mail at: cdphe.bohrequests@state.co.us

Dated this 20th day of May, 2015.

Deborah Nelson
Board of Health Administrator

Notice of Proposed Rulemaking

Tracking number

2015-00309

Department

1000 - Department of Public Health and Environment

Agency

1006 - Health and Environmental Information and Statistics Division - promulgated by Colo Bd of Health

CCR number

5 CCR 1006-2

Rule title

MEDICAL USE OF MARIJUANA

Rulemaking Hearing

Date

07/15/2015

Time

10:00 AM

Location

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

Subjects and issues involved

To consider the promulgation of modifications to the 5 CCR 1006-2, Medical Use of Marijuana regulations to remove notary requirements, add post-traumatic stress disorder (PTSD) as a new debilitating medical condition, address issues brought to the departments attention by the Office of Legislative Legal Services (OLLS) after review of regulation changes approved by the Board of Health in September 2014; and make technical clarifications.

Statutory authority

Colorado Constitution, Article XVIII, Section 14, § 25-1.5-106, C.R.S. and § 25-1.5-106.5 C.R.S.

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Title

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COLORADO
Department of Public Health & Environment

Dedicated to protecting and improving the health and environment of the people of Colorado

To: Members of the State Board of Health

From: Natalie Riggins, Medical Marijuana Program Manager, Center for Health and Environmental Data (CHED); and Ken Gershman, MD, MPH, Manager, Medical Marijuana Research Grant Program, Disease Control and Environmental Epidemiology Division (DCEED)

Through: Dana Erpelding, Director, CHED DE and Rachel Herlihy, MD, MPH, Director, DCEED RH

Date: May 15, 2015

Subject: **Request for Rulemaking Hearing**
Proposed Amendments to 5 CCR 1006-2, Medical Use of Marijuana, with a request for the rulemaking hearing to occur in July of 2015

The Medical Marijuana Registry (MMR) is proposing modifications to the Medical Use of Marijuana regulations. The proposed modifications include: remove unnecessary notary requirements; add post-traumatic stress disorder (PTSD) as a new debilitating medical condition, and; address issues brought to the department's attention by the Office of Legislative Legal Services (OLLS) after review of regulation changes approved by the Board of Health in September 2014. Two technical clarifications to correctly identify a paragraph number and correctly reference the State Administrative Procedure Act are included as part of the Regulation 2 proposed changes.

A. MODIFICATIONS TO REGULATION 2: APPLICATION FOR A REGISTRY IDENTIFICATION CARD AND REGULATION 4: CHANGE IN APPLICANT INFORMATION

1. Removing the requirement to have a Notary in Regulation 2 and Regulation 4

Board of Health Regulation 2 and Regulation 4 currently include a notary requirement. This requirement was first initiated as a result of a noted trend of caregivers submitting patient change forms without the patient's knowledge or consent. The Medical Marijuana Registry patient verification procedures approved by the Board in September 2014 ensure changes to the patient's record are patient driven. With these adjustments, it is no longer necessary for patients to notarize their application. Removing the notarization requirement reduces the burden on applicants to find and pay for a notary.

2. Minor Technical Cleanup of Regulation 2

The Medical Marijuana Registry proposed to conduct minor cleanup of Regulation 2 part B.5. and part I.2. These two technical clarifications identify a paragraph number by Arabic numeral rather than Roman numeral and correctly reference the State Administrative Procedure Act.

B. MODIFICATIONS TO REGULATION 6: DEBILITATING MEDICAL CONDITIONS AND THE PROCESS FOR ADDING NEW DEBILITATING MEDICAL CONDITIONS

1. **Adding PTSD as New Debilitating Medical Condition**

On January 27, 2015, the department received a petition from a patient to add PTSD to the list of debilitating conditions for which an individual may apply for participation in the Medical Marijuana Registry. The department reviewed the information submitted in support of the petition and conducted a search of the medical literature for peer-reviewed published randomized controlled trials or well-designed observational studies concerning the use of marijuana for PTSD. This information was presented to the Medical Marijuana Scientific Advisory Council (SAC) on April 10, 2015. Based on the following considerations, the SAC recommended that the department request the Board of Health to add PTSD as a new debilitating condition:

• There is evidence based on one small, well designed, randomized controlled trial that a synthetic cannabinoid (nabilone) similar to THC (primary cannabinoid in marijuana) is effective in treating PTSD nightmares and possibly other PTSD symptoms. There are several supportive lower quality studies also involving either nabilone or THC.

• Disrupted sleep (nightmares and insomnia) is a core component of PTSD associated with significant distress, functional impairment and poor health; it is linked to PTSD development and maintenance. Current PTSD treatments are quite limited in their ability to manage PTSD-related sleep disturbance.

• Existing treatments for PTSD (pharmacotherapy and psychotherapy) have limitations, do not necessarily result in adequate responses in most of those treated, may not be acceptable to some patients, and may not be available everywhere. In addition, many of the supporting studies of treatment efficacy were conducted among a subset of persons with PTSD who may not be representative of all persons with PTSD.

• There are only two FDA-approved drugs for treating PTSD; a number of other recommended drugs are used off-label. This highlights how accepted conventional treatments are not all subject to the same rigorous process of review and approval.

• Although persons with PTSD have access to recreational marijuana in this state, such access is not statewide, and there may be preferred products available only through medical marijuana centers. The network of caregivers also helps address gaps in access to medical marijuana.

• Some persons with PTSD may be receiving medical marijuana cards by selecting a different debilitating condition (e.g., pain) in their application to the Medical Marijuana Registry (MMR). Adding PTSD provides the MMR an opportunity to obtain more accurate information from applicants, and will improve the department's understanding of MMR patients' medical marijuana needs.

• Although marijuana is not without some adverse effects, this is also true of essentially all FDA-approved drugs, including narcotic pain medications which have substantial abuse potential including the risk of lethal overdosing.

The department proposes that the addition of PTSD as a new debilitating condition be limited to a period of four years. At that point, any new evidence of benefit and harm would be reassessed based on additional published results from further clinical trials and well-designed observational studies, such as those approved for funding by the Board of Health as part of the Medical Marijuana Research Grant Program.

2. **Deleting Role of Medical Marijuana Scientific Advisory Council (SAC) in Reviewing Petitions**

The rules adopted by the Board of Health in September 2014 authorized the SAC to review and make recommendations concerning petitions to add debilitating conditions. The General Assembly has reviewed the rule and determined that the SAC is not authorized to perform this task. SB 15-100 modifies Regulation 6 to remove the SAC from the petition process. The repeal results in a dangling cross-reference and disjointed language that may confuse stakeholders. The revisions clarify the rule following the feedback by the OLLS and decision of the General Assembly. Though the SAC cannot be utilized in its official capacity, the Department recognizes the expertise of the individual members and may continue outreach to those individuals and other MMR stakeholders that can assist the Department in reviewing petitions to add debilitating conditions.

C. MODIFICATIONS TO REGULATION 14: COLORADO MEDICAL RESEARCH GRANT PROGRAM

The Board of Health approved the addition of Regulation 14 in September 2014, which specifies the administration of the Medical Marijuana Research Grant Program by the department, as authorized by § 25-1.5-106.5, C.R.S. The rule authorized the department to establish timelines. Upon review by the OLLS, part A.2 was determined to be overbroad. SB 15-100 modifies Regulation 14 to remove part A.2. The rule revision replaces part A.2 with language that is more specific but allows for some flexibility to meet the needs of the grant program and prospective applicants.

STATEMENT OF BASIS AND PURPOSE
AND SPECIFIC STATUTORY AUTHORITY
for Amendments to
5 CCR 1006-2, Medical Use of Marijuana

Basis and Purpose.
Board of Health Regulation 2 and Regulation 4 require patients to notarize their application and change of patient information forms. The Medical Marijuana Registry patient verification procedures approved by the Board in September 2014 ensure changes to the patient's record are patient driven. With these adjustments, it is no longer necessary for patients to notarize their application or change forms. The changes to Regulation 2 and Regulation 4 remove the notarization requirement.

In addition, the Medical Marijuana Registry proposes minor cleanup of Regulation 2 part B.5. and part I.2. These two technical clarifications identify a paragraph number by Arabic numeral rather than Roman numeral and correctly reference the State Administrative Procedure Act.

On January 27, 2015, the department received a petition from a patient to add post-traumatic stress disorder (PTSD) to the list of debilitating conditions for which an individual may apply for participation in the Medical Marijuana Registry. The department reviewed the information submitted in support of the petition and conducted a search of the medical literature for peer-reviewed published randomized controlled trials or well-designed observational studies concerning the use of marijuana for PTSD. Based upon the current process delineated in Board of Health rules, this information was presented to the Medical Marijuana Scientific Advisory Council (SAC) on April 10, 2015. The SAC recommended that the department request a Board of Health rulemaking hearing to add PTSD as a new debilitating condition.

The rules adopted by the Board of Health in September 2014 authorized the SAC to review and make recommendations concerning petitions to add debilitating conditions. The General Assembly has reviewed the rule and determined that the SAC is not authorized to perform this task. SB 15-100 modifies Regulation 6 to remove the SAC from the petition process; this change is effective May 15, 2015. The repeal results in a dangling cross-reference and disjointed language that may confuse stakeholders. The revisions clarify the rule following the feedback by the OLLS and decision of the General Assembly. Though the SAC cannot be utilized in its official capacity, the Department recognizes the expertise of the individual members and may continue outreach to those individuals and other MMR stakeholders that can assist the Department in reviewing petitions to add debilitating conditions.

The Board of Health approved the addition of Regulation 14 in September 2014. Regulation 14 specifies the administration of the Medical Marijuana Research Grant Program by the department, as authorized by § 25-1.5-106.5, C.R.S. The rule authorized the department to establish timelines. Upon review by the OLLS, part A.2 was determined to be overbroad. SB 15-100 modifies Regulation 14 to remove part A.2.; this change is effective May 15, 2015. The rule revision replaces part A.2 with language that is more specific but allows for some flexibility to meet the needs of the grant program and prospective applicants.

Specific Statutory Authority.
These rules are promulgated pursuant to the following statutes:
Colorado Constitution, Article XVIII, Section 14
§ 25-1.5-106, C.R.S. and § 25-1.5-106.5, C.R.S.

SUPPLEMENTAL QUESTIONS

Is this rulemaking due to a change in state statute?

___X___ Yes in part, the bill number is _SB15-100___; rules are ___ authorized ___ required.
__X___ No

Is this rulemaking due to a federal statutory or regulatory change?

_____ Yes
___X__ No

Does this rule incorporate materials by reference?

_____ Yes
___X__ No

Does this rule create or modify fines or fees?

_____ Yes
___X__ No

REGULATORY ANALYSIS
for Amendments to
5 CCR 1006-2, Medical Use of Marijuana

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.

Removing the notary requirements
Medical marijuana patients and caregivers will benefit as they will no longer be required to spend time seeking the services of a notary public and will save the $5 notary fee currently required on the patient application form, patient change of record form, and the caregiver acknowledgement form. These changes provide clarity, and simplify the processes for Medical Marijuana patients and caregivers

Minor Technical Cleanup of Regulation 2
These clarifications may assist medical marijuana registry stakeholders when reviewing the rules.

Adding PTSD as New Debilitating Medical Condition
Individuals with a diagnosis of post-traumatic stress disorder (PTSD) and for whom a physician has recommended the medical use of marijuana would be able to apply for participation in the Medical Marijuana Registry.

Deleting Role of Medical Marijuana Scientific Advisory Council (SAC) in Reviewing Petitions
None. Though the SAC cannot be used in its official capacity, the Department may still ask stakeholders for feedback when reviewing a petition to add a debilitating condition. Members of the SAC may be asked to participate in the petition review process in their individual capacity.

Colorado Medical Research Grant Program – Procedures and Timelines
Applicants responding to requests for applications to the Medical Marijuana Research Grant Program will benefit by being provided more specific timeline information.

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.

Removing the notary requirements
Medical Marijuana applicants and patients will no longer incur the burden or cost (approximately $5.00) of obtaining a notary.

Minor Technical Cleanup of Regulation 2
These clarifications may assist medical marijuana registry stakeholders when reviewing the rules.

Adding PTSD as New Debilitating Medical Condition
This proposed rule expands the list of eligible conditions for which an individual can apply for participation in the Medical Marijuana Registry. Thus, the number of applicants may increase as a result of this rule, although by how much is difficult to predict. The application process would be identical for an individual with PTSD as for an individual with any of the other qualifying debilitating medical conditions.

Deleting Role of Medical Marijuana Scientific Advisory Council in Reviewing Petitions
None expected as the department may still seek stakeholder feedback to review petitions and provide input to the Department.

Colorado Medical Research Grant Program – Procedures and Timelines
None as the specific dates and requirements are part of the grant application process.

3. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

Removing the notary requirements
There is a nominal one-time cost to update forms, websites and related MMR resources.

Minor Technical Cleanup of Regulation 2
None

Adding PTSD as New Debilitating Medical Condition
The Medical Marijuana Registry may see an increase in applications with the expansion of the number of qualifying debilitating medical conditions. The Medical Marijuana Registry has no way to estimate how many new applications may be received based upon this change, but anticipates that the application fees will be sufficient to cover the costs of the increased numbers of applications. There is a nominal one-time cost to update forms, websites and related MMR resources.

Deleting Role of Medical Marijuana Scientific Advisory Council in Reviewing Petitions
None

Colorado Medical Research Grant Program – Procedures and Timelines
None

4. A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

Removing the notary requirements
These changes provide clarity and simplify the application and renewal processes for Medical Marijuana patients and caregivers, and will save applicants and caregivers the $5 notary fee for each form (application, change of patient record and caregiver acknowledgement) submitted. In addition, a notary signature cannot be captured in the new electronic registry system that is currently under development. Once implemented, the new electronic system will save patients, physicians and caregivers time and postage as applications will be submitted electronically, not via the mail.

Minor Technical Cleanup of Regulation 2
The proposed rule modification is necessary to provide clarity and consistency of language and format in Regulation 2.

Adding PTSD as New Debilitating Medical Condition
Article XVIII, Section 14 of the Colorado Constitution requires the state health agency responsible for administration of the Medical Marijuana Registry to accept petitions from patients and physicians to add debilitating medical conditions to the list of qualifying debilitating medical conditions for the program, and either approve or deny such petitions within 180 days of receipt, and to set a rulemaking hearing if the state

health agency deems such hearing to be appropriate. Inaction is not an option as the petition process is delineated in the constitution and statute.

Deleting Role of Medical Marijuana Scientific Advisory Council in Reviewing Petitions
The proposed rule modification is necessary to address the issue raised by OLLS in their review of Regulation 6.

Colorado Medical Research Grant Program – Procedures and Timelines
The proposed rule modification is necessary to address the issue raised by OLLS in their review of Regulation 14.

5. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

Removing the notary requirements
No. These changes are the least costly and intrusive, as the proposed rule modification simplifies the application and renewal processes, removing the current notary cost and burden to patients and caregivers.

Minor Technical Cleanup of Regulation 2
No. The proposed rule modification is necessary to provide clarity and consistency of language and format in Regulation 2.

Adding PTSD as New Debilitating Medical Condition
Article XVIII, Section 14 of the Colorado Constitution requires the state health agency responsible for administration of the Medical Marijuana Registry to accept petitions from patients and physicians to add debilitating medical conditions to the list of qualifying debilitating medical conditions for the program, and either approve or deny such petitions within 180 days of receipt, and to set a rulemaking hearing if the state health agency deems such hearing to be appropriate. § 25-1.5-106, C.R.S. authorizes the department to administer the Medical Marijuana Registry program and promulgate rules of administration in conformance with state law. The proposed rules add PTSD to the current Medical Marijuana Registry program rules that list all other qualifying debilitating medical conditions.

Deleting Role of Medical Marijuana Scientific Advisory Council in Reviewing Petitions
No. The proposed rule modification is necessary to address the issue raised by OLLS in their review of Regulation 6.

Colorado Medical Research Grant Program – Procedures and Timelines
No. The proposed rule modification is necessary to address the issue raised by OLLS in their review of Regulation 14.

6. Alternative Rules or Alternatives to Rulemaking Considered and Why Rejected.

Removing the notary requirements
No alternatives to rulemaking were considered as the proposed rule change will simplify the application and renewal processes and reduce cost and burden for Medical Marijuana patients and caregivers.

Minor Technical Cleanup of Regulation 2
No alternatives to rulemaking were considered as the proposed rule modification is necessary to provide clarity and consistency of language and format in Regulation 2.

Adding PTSD as New Debilitating Medical Condition
As described above, the rule modification proposed amends the current rule, which lists the qualifying debilitating medical conditions, to add PTSD. Without a rulemaking, the department is unable to amend the list. These rules are authorized by § 25-1.5-106, C.R.S.

Deleting Role of Medical Marijuana Scientific Advisory Council in Reviewing Petitions
There are no alternatives to address the issue raised by OLLS in their review of Regulation 6.

Colorado Medical Research Grant Program – Procedures and Timelines
There are no alternatives to address the issue raised by OLLS in their review of Regulation 14.

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.

Removing the notary requirements
The Department contacted notaries to assess the approximate current cost of $5.00. The requirement of a notary does incur a cost of approximately $5.00, that may be burdensome for some Medical Marijuana patients. This new process allows MMR to verify that the patient is aware of all forms submitted in their name, while eliminating the burden of needing a notary.

Adding PTSD as New Debilitating Medical Condition
There is one small randomized, placebo controlled, cross-over design study of the clinical efficacy of a synthetic analogue (nabilone) of delta-9 tetrahydrocannbinol (THC – the major cannabinoid in marijuana) in male military personnel with PTSD and treatment-resistant nightmares. Administration of this synthetic THC was well tolerated and effective in reducing PTSD-related nightmares, as well as self-reported PTSD global improvement, but not in improving sleep quality and quantity. The citation for this study is: Jetly R et al, Psychoneuroendocrinology 2015; 51:585-588. There are two less rigorously designed, open-label (i.e., no placebo control) clinical studies of efficacy of either oral THC or the synthetic THC analogue, nabilone, that reported supportive results. The oral THC administration was well tolerated and effective in improving global PTSD symptoms, nightmares and sleep quality. The nabilone administration was generally well tolerated and resulted in lessening of severity or total cessation of treatment-resistant nightmares. The citations for these two studies, respectively, are: Roitman P, et al, Clinical Drug Investigation 2014;34:587-591; and: Fraser G, CNS Neuroscience & Therapeutics 2009;15:84-88.

Materials that were reviewed by the Department and the Scientific Advisory Council are available as part of the Scientific Advisory Council April 10, 2015 meeting materials.

STAKEHOLDER COMMENTS
for Amendments to
5 CCR 1006-2, Medical Use of Marijuana

The following individuals and/or entities were included in the development of these proposed rules: (Please be specific. Identify your stakeholders with enough specificity the Board has context for the extent of the outreach.)

The Medical Marijuana Scientific Advisory Council

The following individuals and or/entities were notified that this rule-making was proposed for consideration by the Board of Health:

The Medical Marijuana Scientific Advisory Council
Medical Marijuana Registry Stakeholders Lists
Department of Revenue
Colorado Medical Society
Colorado Psychiatric Society
Colorado Academy of Family Physicians

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.

Adding PTSD as New Debilitating Medical Condition
We have received feedback from one physician member of the Medical Marijuana Scientific Advisory Council (SAC) opposing the majority recommendation of the SAC. We anticipate receiving more such comments from the medical community and will update the Board prior to and as part of any rulemaking hearing.

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?

Removing the Notary Requirement
This proposal removes the requirement for a Notary on the Medical Marijuana application resulting in a cost savings for all applicants; however, homebound patients and applicants eligible for the indigence fee waiver may benefit more.

Minor Technical Cleanup
The proposed rule modification is necessary to provide clarity and consistency of language and format in Regulation 2.

Adding PTSD as New Debilitating Medical Condition
This proposal serves to establish more equitable access to medical marijuana to both veterans and civilians suffering from PTSD, compared with other groups of Coloradoans with debilitating conditions that are already part of the Medical Marijuana Registry. Persons with PTSD who may currently be self-medicating with recreational marijuana may benefit from easier and more affordable access to marijuana through medical marijuana dispensaries.

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Health and Environmental Information and Statistics Division

MEDICAL USE OF MARIJUANA

5 CCR 1006-2

*****

Regulation 2: Application for a registry identification card

A. In order to be placed in the registry and to receive a registry identification card, an adult applicant must reside in Colorado and complete an application form supplied by the department, and have such application ~~notarized~~ ~~and~~ signed and include the fee payment. The adult applicant must provide the following information with the application:

*****

B. In order for a minor applicant to be placed in the registry and to receive a registry identification card, the minor applicant must reside in Colorado and a parent residing in Colorado must consent in writing to serve as the minor applicant's primary care-giver. Such parent must complete an application form supplied by the department, and have such application notarized, signed and include fee payment. The parent of the minor applicant must provide the following information with the application:

1. The applicant's name, address, date of birth, and social security number;

2. Written documentation from two of the applicant's physicians that the applicant has been diagnosed with a debilitating medical condition as defined in regulation six and each physician's conclusion that the applicant might benefit from the medical use of marijuana;

3. The name, address, and telephone number of the two physicians who have concluded the applicant might benefit from the medical use of marijuana;

4. Consent from each of the applicant's parents residing in Colorado that the applicant may engage in the medical use of marijuana;

5. Documentation that one of the physicians referred to in ~~(iii)~~ (3) has explained the possible risks and benefits of medical use of marijuana to the applicant and each of the applicant's parents residing in Colorado; and

6. Indicate if a medical marijuana center has been designated to grow for the patient.

*****

I. Appeals. If the department denies an application or, suspends or, revokes a registry identification card, the department shall provide the applicant/patient with notice of the grounds for the denial, suspension, or revocation, and shall inform the patient of the patient's right to request a hearing. A request for hearing shall be submitted to the department in writing within thirty (30) calendar days from the date of the postmark on the notice.

1. If a hearing is requested, the patient shall file an answer within thirty (30) calendar days from the date of the postmark on the notice.

2. If a request for a hearing is made, the hearing shall be conducted in accordance with the ~~state~~ STATE Administrative Procedure ~~Procedures~~ Act, § 24-4-101, et seq., C.R.S.

3. If the patient does not request a hearing in writing within thirty (30) calendar days from the date of the notice, the patient is deemed to have waived the opportunity for a hearing.

*****

Regulation 4: Change in applicant information

A. When there has been a change in the name, address, physician or primary care-giver of a patient who has been issued a registry identification card, that patient must notify the department within ten days by submitting a completed ~~and notarized~~ Change of Address or Care-giver form as prescribed by the Department. A patient who has not designated a primary care-giver at the time of application to the department may do so in writing at any time during the effective period of the registry identification card, and the primary care-giver may act in this capacity after such designation. The Department shall not issue a new registry identification card to the patient on the sole basis of a new or change of primary care-giver.

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Regulation 6: Debilitating medical conditions and the process for adding new debilitating medical conditions

A. Debilitating medical conditions are defined as cancer, glaucoma, and infection with or positive status for human immunodeficiency virus. Patients undergoing treatment for such conditions are defined as having a debilitating medical condition.

B. 1. Debilitating medical condition also includes a chronic or debilitating disease or medical condition other than HIV infection, cancer or glaucoma; or treatment for such conditions, which produces for a specific patient one or more of the following, and for which, in the professional opinion of the patient's physician, such condition or conditions may reasonably be alleviated by the medical use of marijuana: cachexia; severe pain; severe nausea; seizures, including those that are characteristic of epilepsy; or persistent muscle spasms, including those that are characteristic of multiple sclerosis.

2. FOR APPLICATIONS RECEIVED BETWEEN SEPTEMBER 14, 2015 AND SEPTEMBER 14, 2019, AN ADDITIONAL DEBILITATING MEDICAL CONDITION FOR WHICH AN APPLICANT MAY APPLY FOR THE MEDICAL MARIJUANA PROGRAM REGISTRY INCLUDES POST-TRAUMATIC STRESS DISORDER (PTSD).

C. Patients who have had a diagnosis of a debilitating medical condition in the past but do not have active disease and are not undergoing treatment for such condition are not suffering from a debilitating medical condition for which the medical use of marijuana is authorized.

D. The department shall accept physician or patient petitions to add debilitating medical conditions to the list provided in paragraphs A and B of this regulation, and shall follow the following procedures in reviewing such petitions.

1. Receipt of petition; review of medical literature. Upon receipt of a petition, the executive director, or his or her designee, shall review the information submitted in support of the petition and shall also conduct a search of the medical literature for peer-reviewed published literature of randomized controlled trials or well-designed observational studies in humans concerning the use of marijuana for the condition that is the subject of the petition using PUBMED, the official search program for the National Library of Medicine and the National Institutes of Health, and the Cochrane Central Register of Controlled Trials.

2. Department denial of petitions. The department shall deny a petition to add a debilitating medical condition within (180) days of receipt of such petition without any hearing of the board in all of the following circumstances:

a. If there are no peer-reviewed published studies of randomized controlled studies nor well-designed observational studies showing efficacy in humans for use of medical marijuana for the condition that is the subject of the petition;

b. If there are peer-reviewed published studies of randomized controlled trials or well-designed observational studies showing efficacy in humans for the condition that is the subject of the petition, and if there are studies that show harm, other than harm associated with smoking such as obstructive lung disease or lung cancer, and there are alternative, conventional treatments available for the condition; OR

c. If the petition seeks the addition of an underlying condition for which the associated symptoms that are already listed as debilitating medical conditions for which the use of medical marijuana is allowed, such as severe pain, are the reason for which medical marijuana is requested, rather than for improvement of the underlying condition~~; or.~~

~~d If a majority of the ad hoc medical advisory panel recommends denial of the petition in accord with paragraph (3) of this section D.~~

3. IF THE CONDITIONS OF DENIAL SET FORTH IN PARAGRAPH (2) ARE NOT MET, THE DEPARTMENT SHALL PETITION THE BOARD FOR A RULEMAKING HEARING TO CONSIDER ADDING THE CONDITION TO THE LIST OF DEBILITATING MEDICAL CONDITIONS.

[This editorial comment is informational and will not be included in the adopted rule: Lines 106-131 have been repealed by the General Assembly through the rule review bill, SB 15-100. The repeal is effective May 15, 2015.]

~~3. Medical marijuana scientific advisory council.~~

~~a. The medical marijuana scientific advisory council shall perform all of the following duties:~~

~~i. Objectively evaluate research proposals and provide a peer review process that guards against funding research that is biased in favor or against particular outcomes for proposals submitted for the Colorado medical marijuana research grant program;~~

~~ii. Provide policy guidance in the creation and implementation of the Colorado medical marijuana research grant program and in scientific oversight and review, and;~~

~~iii. Review petitions to add a debilitating medical condition to the registry and make a denial or approval recommendation to the department.~~

~~b. The medical marijuana scientific advisory panel council will review petitions to add debilitating medical conditions if the conditions for denial set forth in paragraphs (2)(A),(B) and (C) of this section d are not met. When reviewing petitions to add debilitating medical conditions to the registry, the ad hoc member of the council may be replaced by an ad hoc physician in the field relevant to the petition. Such individual may be recommended by the petitioner.~~

~~c. The council shall review the petition information presented to the department and any further medical research related to the condition requested, and make~~

~~recommendations to the executive director, or his or her designee, regarding the petition.~~

~~d. Within (120) days of receipt of a petition to add a debilitating medical condition, the department shall petition the board for a rulemaking hearing to consider adding the condition to the list of debilitating medical conditions if the council recommends approval of the petition to add the condition.~~

4. Final agency action. The following actions are final agency actions, subject to judicial review pursuant to C.R.S. § 24-4-106:

a. Department denials of petitions to add debilitating medical conditions.

b. Board of health denials of rules proposed by the department to add a condition to the list of debilitating medical conditions for the medical marijuana program

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Regulation 14: Colorado medical research grant program

A. Procedures for grant application to the grant program

1. Grant application contents.

a. At a minimum, all applications shall be submitted to the department in accordance with these rules and shall contain the following information:

i. A description of key personnel, including clinicians, scientists, or epidemiologists and support personnel, demonstrating they are adequately trained to conduct this research.

ii. Procedures for outreach to patients with various medical conditions who may be suitable participants in research on marijuana.

iii. Protocols suitable for research on marijuana as medical treatment including procedures for collecting and analyzing data and statistical methods to be used to assess significant outcomes.

iv. Demonstration that appropriate protocols for adequate patient consent and follow-up procedures are in place.

v. A process for a grant research proposal approved by the grant program to be reviewed and approved by an institutional review board that is able to approve, monitor, and review biomedical and behavioral research involving human subjects.

[This editorial comment is informational and will not be included in the adopted rule: Line 161 has been repealed by the General Assembly through the rule review bill, SB 15-100. The repeal is effective May 15, 2015.]

2. Timelines for grant application.

~~Grant applications may be solicited on dates determined by the department.~~

A. ABSENT APPROVAL FROM THE BOARD OF HEALTH, THE DEPARTMENT WILL SEEK APPLICATIONS NO MORE THAN THREE TIMES PER YEAR.

B. THE DEPARTMENT WILL NOTIFY PROSPECTIVE APPLICANTS OF THE OPPORTUNITY TO APPLY.

C. PROSPECTIVE APPLICANTS WILL HAVE A MINIMUM OF THIRTY DAYS TO APPLY.

D. APPLICATIONS WILL BE REVIEWED WITHIN 120 DAYS OF SUBMISSION AND REFERRAL OF RECOMMENDED APPLICATIONS TO THE BOARD OF HEALTH WILL BE WITHIN 180 DAYS OF SUBMISSION.

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COLORADO
Board of Health
Department of Public Health & Environment

Notice of Public Rule-Making Hearing

Scheduled for July 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 July 15, 2015 at 10 a.m. in the Sabin-Cleere Conference Room of the Colorado Department of Public Health and Environment, Bldg. A, First Floor, 4300 Cherry Creek Drive, South, Denver, CO 80246, to consider the promulgation of modifications to the 5 CCR 1006-2, Medical Use of Marijuana regulations to remove notary requirements, add post-traumatic stress disorder (PTSD) as a new debilitating medical condition, address issues brought to the department's attention by the Office of Legislative Legal Services (OLLS) after review of regulation changes approved by the Board of Health in September 2014; and make technical clarifications.

The proposed rules have been developed by the Center for Health and Environmental Data, and the Disease Control and Environmental Epidemiology Division of the Colorado Department of Public Health and Environment pursuant to Colorado Constitution, Article XVIII, Section 14, § 25-1.5-106, C.R.S. and § 25-1.5-106.5 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 emailing: medical.marijuana@state.co.us, or by contacting the Colorado Department of Public Health and Environment, Medical Marijuana Registry HSV-8608, 4300 Cherry Creek Drive S., Denver, CO 80246, (303) 692-2184.

The Board encourages all interested persons to participate in the hearing by providing written data, views, or comments, or by making oral comments at the hearing. At the discretion of the Chair, oral testimony at the hearing may be limited to three minutes or less depending on the number of persons wishing to comment. Pursuant to 6 CCR 1014-8, §3.02.1, written testimony must be submitted no later than five (5) calendar days prior to the rulemaking hearing. Written testimony is due by 5:00 p.m., Thursday, July 9, 2015. Persons wishing to submit written comments should submit them to: Colorado Board of Health, ATTN: Jamie L. Thornton, Program Assistant, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South EDO-A5, Denver, Colorado 80246-1530 or by e-mail at: cdphe.bohrequests@state.co.us

Dated this 18th day of May, 2015.

Deborah Nelson
Board of Health Administrator

Notice of Proposed Rulemaking

Tracking number

2015-00308

Department

1000 - Department of Public Health and Environment

Agency

1009 - Disease Control and Environmental Epidemiology Division - promulgated by Colo Bd of Health

CCR number

6 CCR 1009-5

Rule title

RULES AND REGULATIONS PERTAINING TO PREPARATIONS FOR A BIOTERRORIST EVENT, PANDEMIC INFLUENZA, OR AN OUTBREAK BY A NOVEL AND HIGHLY FATAL INFECTIOUS AGENT OR BIOLOGICAL TOXIN

Rulemaking Hearing

Date

07/15/2015

Time

10:00 AM

Location

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

Subjects and issues involved

To consider the promulgation for modifications to 6 CCR 1009-5, Preparations for a Bioterrorist Event, Pandemic Influenza, or an Outbreak by a Novel and Highly Fatal Infectious Agent or Biological Toxin.

Statutory authority

C.R.S. §24-33.5-703, §25-1-501 and §25-1-108

Contact information

Name

Lyle Moore

Title

Resiliency Officer

Telephone

303-692-2669

Email

lyle.moore@state.co.us

COLORADO
Department of Public Health & Environment

To: Members of the State Board of Health

From: Lyle Moore, Resiliency Officer
Office of Emergency Preparedness and Response

Through: Karin McGowan, Deputy Executive Director KM
Colorado Department of Public Health and Environment

Date: May 15, 2015

Subject: **Request for Rulemaking Hearing**
Proposed Amendments to 6 CCR 1009-5 Preparations for a Bioterrorist Event, with a request for the rulemaking hearing to occur on July 15, 2015.

The Colorado public health and medical community has experienced an unprecedented amount of emergency incidents in the last four years. The wildfire events of 2011 and 2013, the 2013 floods, and the 2014 West African Ebola outbreak are constant reminders that the public health and medical community must be prepared. Emergency incidents across the nation have shown that strong foundations of emergency preparedness dictate the speed of response. Forecasts predict that natural incidents will increase in numbers and intensity, providing ample warning for the need of preparedness measures within Colorado's public health and medical communities.

Colorado has developed the Emergency Support Function (ESF) system, a response support system that mirrors the federal government while allowing for local jurisdictional control. In this system incident response is conducted at the local level while resource support is provided via concentric circle methodology. The Colorado Department of Public Health and Environment is responsible for the State Emergency Support Function #8, Public Health and Medical. Using this system local city requests go to their county counterparts, county requests go to regional counterparts, regional requests go to state counterparts and state then requests resources from their federal government counterparts. All resource requests come from local response efforts into the ESF system and the public health and medical components of those requests are funneled to CDPHE. The purpose of the rule discussed below, 6 CCR 1009-5 Preparations for a Bioterrorist Event, Pandemic Influenza, or an Outbreak by a Novel and Highly Fatal Infectious Agent or Biological Toxin, is to ensure that local agencies and CDPHE have a base level of preparedness to enact response activities or support those activities using the Emergency Support Function system.

The Department of Public Health and Environment is proposing to amend 6 CCR 1009-5 Preparations for a Bioterrorist Event, Pandemic Influenza, or an Outbreak by a Novel and Highly Fatal Infectious Agent or Biological Toxin. The Office of Emergency Preparedness and Response conducted an audit of the rule, in compliance of Executive Order 2,

resulting in the need for the following updates and changes. Since the rules origination in 2001, and update in 2007, there have been numerous changes with basic emergency preparedness doctrine and these updates and the proposed edits incorporate these changes. Emergency events have tested the rules and their ability to create a preparedness base for the public health and medical community. Best practices or lessons learned from these events must now be incorporated into the rule, ensuring that the rule integrates and keeps up with tried and tested practices for responding or recovering from an emergency event. The proposed changes also include stakeholder feedback that communicated portions of the rule were cost prohibitive.

The purpose of this rule is to provide emergency preparedness direction for local health jurisdictions, hospitals, rural health clinics and community health centers, regional emergency medical and trauma services advisory councils, and CDPHE. The rule builds a common base for preparedness efforts. This base provides quick and directed activities for responding to and recovering from emergency incidents. The rule also outlines basic preparedness measures by designating corresponding regulations for each of the stakeholders. The regulations are as follows:

- Regulation 1 = Local Public Health Agencies
- Regulation 2 = Hospitals
- Regulation 3 = Rural Health Clinics and Community Health Centers
- Regulation 4 = Regional Emergency Medical and Trauma Services Advisory Councils
- Regulation 5 = the Colorado Department of Public Health and Environment
- Regulation 6 = Rule compliance

The proposed revisions include the results of an extensive stakeholder feedback process. A workgroup was comprised of representatives from stakeholders groups that must comply with the rule. Upon completion of the workgroup, the proposed draft rule was sent to all stakeholders for a two month period of feedback. To ensure all parties had ample opportunity to provide feedback, an email was sent reminding them of the deadline and requesting any rule change feedback. Rule change feedback from the Office of the Attorney General was received and incorporated. These proposed changes were also brought to the Governors Expert Emergency Epidemic Response Committee for the opportunity to provide feedback. While extensive, the proposed changes do not change the intent and purpose of the rule; to better prepare the health and medical community for response to an emergency incident while keeping staff protected during response activities.

Noteworthy changes to multiple regulations within the current rule, as proposed, include:

- Updated the notification list requirement to confirm that the list is accurate and up to date. Requirement based on prevailing issue in emergency after action reports where notification lists contain outdated information. This change will assist in alleviating that identified gap.
- Reduced requirement for the notification list test to once a year. This change was based on stakeholder feedback and that notification lists are now being used throughout the year in day to day activities.

- Language was added to the notification test requirement that allows real incident notification to substitute for the testing requirement. Incident communication will always be a better measure of success than drills or exercises.
- Added language that includes review of the mutual aid agreement at a minimum of every 5 years by the participating agencies.
- Changed plan submittal from annually to as needed or at least every 3 years via submitting to the Colorado Department of Public Health and Environment for review instead of the Board of Health, Appendix A: Colorado Emergency Preparedness Plans. As expressed by stakeholder feedback, plan submission every year is an unnecessary requirement placed upon all involved, especially if a plan is not changed.
- Added wording that will ensure the training of staff on the personal protective equipment purchased. Ensuring the safety of staff by having sufficient supplies and by being properly trained with those supplies. This inconsistency has been witnessed with recent Ebola response.
- The procured cache of antibiotics section has seen significant changes. The plan must now include a section on the distribution of the cache of antibiotics that have been procured by the agency. This cache has been reduced from a 5 day supply to a 3 day supply. This adjustment comes from lessons learned with previous incidents involving the Strategic National Stockpile (SNS), the 12 hour time frame for the SNS to be delivered upon request, and the time frame it will take to distribute the SNS. The number of employees covered within this cache was also reduced from all employees to just those that will have a role in response activities, leaving that determination up to the agencies involved. The antibiotic of choice has also been updated from specifically naming doxycycline to any combination of antibiotics that are effective against category A bacterial agents, Appendix B: Antibiotic Determination Letter. Colorado Emergency Preparedness Plans. These changes provide stakeholders the opportunity to reduce costs associated with the antibiotic cache section while still ensuring the freedom for cache size is allowed as smaller entities may need all staff while bigger entities may only need a section of staff.
- The duties and responsibilities of creating teams to monitor the situation were incorporated into the creation of an operations center section, the main purpose of an operations center. This follows along emergency management doctrine and the National Response Framework guidance.
- Expanded on the section about the Strategic National Stockpile. At the time of the inception of this rule, only pharmaceutical interventions were available within the SNS. This additional medical equipment and supplies to the stockpile created a need for this additional section.
- Managed care organization was stricken from the rule.
- Changed wording with the requirement for two public spokespersons to be replaced with a public information officer. This change follows the Incident

Command System and is the correct designation for the activities outlined within the section.

- Added a requirement within the plan to designate a back-up communication system.
- Changed language of conducting one exercise of the plan annually to conducting one exercise of the plan at least every 3 years. This change follows Homeland Security Exercise and Evaluation Program guidance, allowing for identified gaps to be rectified.
- Language was added to the exercise requirement section that allows a real incident to substitute for the exercise requirement. Real life incidents will always be a better measure of success than drills or exercises.

Basic changes for multiple regulations within the current rule, as proposed, include:

- Bullet point numbering adjusted.
- Updated naming from the National Response Plan to the National Response Framework. In 2008, the Federal Emergency Management Agency released an updated version of the National Response Plan that included a name change to the National Response Framework.
- Changed wording within the plan section from the plan being "provided" to the plan being "reviewed with and made available" to the local jurisdiction's response partners. Ensuring response partners are aware of and understand that all local agency plans were deemed by the workgroup as important as submitting plans to the state for review and should be added as a requirement.
- Deleted the word "all" for numerating employees. All employees may not be brought into response or recovery actions, a practiced doctrine within emergency management and a needed business continuity action as other day to day activities still need to be accomplished.
- Deleted off duty or retired health care providers within the volunteer section. This was replaced with a process for recruiting and credentialing of volunteers. The workgroup felt that this wording would better encompass such systems as the ESF8 support system and the Colorado Volunteer Mobilizer.
- Rapid transport of human specimens was provided with its own section.
- Updated the statutory citations to align with the Public Health Act

Changes specific to Regulation 1 – LPHAs include:

- Updated the naming of county and district health departments and public health nursing services to local public health agency, following the naming convention of the Colorado Public Health Act.
- An internal emergency call down list, including after-hours information, was added ensuring that the local public health agency has a means of contacting their staff in

the need to organize and respond to an emergency event after normal business hours.
- Communication with local emergency management agency was deleted, changing the section to become inclusive of all emergency response partners that can be communicated with, not only emergency management.

Changes to the current rule, as proposed within Regulation 2 – Hospital include:
- Deleted a facility specific operations center and changed to an operations center. This change allows for campus designated operation centers at locations where there are more than one facility.
- Hospital was deleted to ensure all buildings within a campus were covered within this section.
- Traffic management was also added due to lessons learned from previous incidents and identified gaps discovered within exercises.
- Wording change speaking to infection control measures, including the deletion of "epidemic," as the workgroup felt this section as written was limiting.

Changes to the current rule, as proposed within Regulation 3 – Rural Health Clinics and Community Health Centers include:
- Managed Care Organizations was removed.
- Clinic was added to rural health throughout the regulation.

Changes to the current rule, as proposed within Regulation 4 - RETAC include:
- Grammatical wording deletion of Organization.

Changes to the current rule, as proposed within Regulation 5 – CDPHE include:
- Added requirement for CDPHE to sign the statewide public health agency mutual aid agreement.
- Added the maintenance of a transport system for specimens to the state laboratory.

Changes to the current rule, as proposed within Regulation 6 include:
- Changed wording so that plans will be submitted and reviewed by the Colorado Department of Public Health and Environment. Current wording has plans being submitted to the Board of Health, to then be reviewed by the CDPHE, creating an additional step. This change is to create efficiency with the established process.

Changes to the current rule, as proposed within Regulation 7 include:
- Regulation was stricken entirely and is included within regulation 1. Updates to the naming of local public health agency that now includes public health nursing services, follows the naming convention of the Colorado Public Health Act.

Regulation Comparison List

This table describes a comparison of the sections within each regulation of the rule to the stakeholders.

	LPHA	Hospital	EMS	Clinics	CDPHE
Notification List	X	X	X	X	X
MAA	X				X
Response Plan	X	X	X	X	X
NIMS	X	X	X		X
PPE	X	X	X	X	X
Antibiotic Cache	X	X	X		X
Cache Process				X	
Call down list	X		X		X
EOC/DOC	X	X			X
SNS Plan	X	X			X
PIO	X				X
Backup Communication System	X	X	X	X	X
Exercise	X	X	X	X	X
Volunteers	X	X			X
Security	X	X			X
Specimen	X	X		X	X
Infection Control	X	X			X
Divert		X			
Triage		X			

Plans

This table describes the plans that have been submitted for review compared to the stakeholders within the rule.

Agency Type	Number of Agencies	EOP	SNS	ESF 8	Communication	MCI	Fatality		
LPHA	54	X	X	X	X		X		
Hospital	85	X	X		X		X		
EMS	202	X	X		X	X			
Rural Clinics	51	X	X		X				
FQHC	18	X	X		X				
CDPHE	1	X	X	X	X	X	X		

STATE OF COLORADO

John W. Hickenlooper, Governor
Larry Wolk, MD, MSPH
Executive Director and Chief Medical Officer

Dedicated to protecting and improving the health and environment of the people of Colorado

4300 Cherry Creek Dr. S.
Denver, Colorado 80246-1530
Phone (303) 692-2000
Located in Glendale, Colorado

www.colorado.gov/cdphe

Colorado Department
of Public Health
and Environment

June 20, 2014

To whom it may concern:

Recently, the Colorado Department of Public Health and Environment (CDPHE), Office of Emergency Preparedness and Response (OEPR) has received numerous questions and requests related to the Board of Health Rule, 6 CCR 1009-5, rules and regulations pertaining to Preparations for a Bioterrorist Event, Pandemic Influenza, or an Outbreak by a Novel and Highly Fatal Infectious Agent or Biological Toxin. Specifically, the department has received questions about what is meant by "other antibiotic, as determined by Colorado Department of Public Health and Environment" to be used in a prophylaxis measure as used in Regulation 1.3.C., Regulation 2.2.C and Regulation 3.2.B. and Regulation 4.2.C. The purpose of this letter is to provide guidance to local public health agencies, general and critical access hospitals, Managed Care Organizations, Rural Health and Community Health Centers, and Regional Emergency Medical and Trauma Services Advisory Councils in implementing this rule.

The Colorado Department of Public Health and Environment determines that "other antibiotic" includes any antibiotic or combination of antibiotics that will cover Category A bioterrorism agents. Category A agents are determined by the Centers for Disease Control and Prevention (CDC). This list can be found on the CDC website at http://www.bt.cdc.gov/agent/agentlist-category.asp

This guidance only applies to the specific regulations identified above. If there are further questions, please contact Lyle Moore, the Director of the Office of Emergency Preparedness and Response within the Colorado Department of Public Health and Environment.

Sincerely,

Larry Wolk, MD MSPH
Executive Director and Chief Medical Officer
Colorado Department of Public Health and Environment

STATEMENT OF BASIS AND PURPOSE AND SPECIFIC STATUTORY AUTHORITY
for Amendments to:
6 CCR 1009-5 Preparations for a Bioterrorist Event, Pandemic Influenza, or an Outbreak by a Novel and Highly Fatal Infectious Agent or Biological Toxin

Basis and Purpose.

The Department of Public Health and Environment is proposing to amend 6 CCR 1009-5 Preparations for a Bioterrorist Event, Pandemic Influenza, or an Outbreak by a Novel and Highly Fatal Infectious Agent or Biological Toxin. The purpose of this rule is to provide preparedness direction for local health jurisdictions, hospitals, rural health clinics and community health centers, regional emergency medical and trauma services advisory councils, and CDPHE. The rule builds a common base for preparedness efforts that assist in quick and directed activities for responding to and recovering from emergency incidents. The rule also outlines basic preparedness measures by designating corresponding regulations for each of the stakeholders:

- Regulation 1 = Local Public Health Agencies
- Regulation 2 = Hospitals
- Regulation 3 = Rural Health Clinics and Community Health Centers
- Regulation 4 = Regional Emergency Medical and Trauma Services Advisory Councils
- Regulation 5 = the Colorado Department of Public Health and Environment
- Regulation 6 = Rule compliance

Pursuant to Executive Order D 2012-002 (EO 2), the Department is required to review its rules to ensure the rules are efficient, effective and essential. The Office of Emergency Preparedness and Response conducted such a review, resulting in the need for these updates and changes. EO 2 instructs that during its review, the Department shall ensure that each rule can achieve the desired intent and if the rule can be amended to reduce any regulatory burdens while maintaining that intent. These proposed updates and changes fall under both EO2 directives, while being cognizant of the fiscal implications that this rule places on all stakeholders. These revisions also follow the State Board of Health Rule 6 CCR 1014-7, Core Public Health Services, ensuring that the regulations included within this rule are not contradictory to the provisions set within the Emergency Preparedness and Response section.

The first basis for change was to update the rule. Since the creation of this rule in 2001, there has been only 1 update in 2007. Basic emergency preparedness doctrine have changed or have been created over the past 8 years and thus need to be reflected within this rule. The proposed amendments accomplish this. Another updating need was to amend the rule with current lessons learned established from events and exercises across the state and the nation. One such newly developed revision includes the requirement for all stakeholders to include within their base emergency operation plan a section designated for a back up communication system. Communication is the foundation for response and should have a plan for back up when the original system becomes inoperable. This newly added section requirement will specifically address this common gap identified from numerous emergency incidents and follow best practices that have been established across the nation. Other updates or revisions include, but are not limited to:

- Update of naming from the National Response Plan to the National Response Framework.
- Additions to the notification list requirement for annual confirmation of the contact information included within the notification list. The annual testing requirement can now be substituted with a notification occurring during a real emergency incident.
- Change of plan submittal from annually to as needed or at least every 3 years.
- Requirement that the plan is reviewed with and made available to response partners,

making certain response partners are aware of and understand all local agency plans.

- Reduction of enumerating language when speaking to employees, allowing jurisdictions to assign or keep resources for staff as needed and allowable within current budget restraints.
- Addition of a training requirement for designated staff on the personal protective equipment that is purchased for them to use during an incident.
- The prophylaxis cache has multiple revisions. A plan requirement for the distribution of the cache to employees covered is now included. Another change includes the reduction of the current inventory of the cache from a 5 day supply to a 3 day supply, and to include only those employees that are needed by the agency for their response activities. Adjusting the naming of a specific antibiotic has also been revised.
- Managed Care Organizations was stricken completely.
- Changes to follow the naming convention of the Colorado Public Health Act.
- The addition of a review of mutual aid agreements at least every 5 years by the participating agencies.
- Requirement added for an internal emergency call down list.
- The duties and responsibilities of creating teams to monitor the situation were incorporated into the creation of an operations center, the main purpose of an operations center. This follows along emergency management doctrine and the National Response Framework guidance.
- Wording was created to provide clarity about the Strategic National Stockpile (SNS). At the time of the inception of this rule, only pharmaceutical interventions were available within the SNS.
- Change of language with the requirement for 2 public spokespersons, replacing it with a public information officer. This change follows the Incident Command System and is the correct designation for the activities outlined within the section.
- Communication with local emergency management agencies was deleted, changing the section to become inclusive of all emergency response partners that can be communicated with, not only emergency management.
- Requirement for a back up communication system was created.
- Change in language of conducting one exercise of the plan annually to conducting one exercise of the plan at least every 3 years. This change follows Homeland Security Exercise and Evaluation Program guidance, allowing for identified gaps to be rectified.
- Addition to the exercise requirement section that allows a real incident to substitute for the exercise requirement. Real life incidents will always be a better measure of success than drills or exercises.

The Department would like the Board of Health to schedule a rulemaking hearing on the proposed rule changes for July 15, 2015.

The Department has conducted an extensive stakeholder process to develop the proposed changes and additions to the regulations. As of the date of this memo, we anticipate that all stakeholder issues will be resolved by the date of the rulemaking hearing.

Specific Statutory Authority.
These rules are promulgated pursuant to the following statutes:

24-33.5-703,
25-1-501,
25-1-108

SUPPLEMENTAL QUESTIONS

Is this rulemaking due to a change in state statute?

_____ Yes, the bill number is _____; rules are ___ authorized ___ required.
___x___ No

Is this rulemaking due to a federal statutory or regulatory change?

_____ Yes
___x___ No

Does this rule incorporate materials by reference?

_____ Yes
___x___ No

Does this rule create or modify fines or fees?

_____ Yes
___x___ No

REGULATORY ANALYSIS
for Amendments to
6 CCR 1009-5 Preparations for a Bioterrorist Event, Pandemic Influenza, or an Outbreak by a Novel and Highly Fatal Infectious Agent or Biological Toxin

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.

Local public health agencies, hospitals, rural health clinics, community health centers, regional emergency medical and trauma advisory councils, and the Colorado Department of Public Health and Environment.

2. To the extent practicable, a description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

The suggested rule revisions should lessen the financial burden placed upon the entities involved.

3. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

No effect on state revenues. The costs for entities involved will be in activities associated with preparing to respond for emergency incidents. This will include the costs associated with protecting their workforce, thus enabling the entity to recover and provide the services that were interrupted by the emergency incident.

4. A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

Probable costs related to modifying the cache requirement could be potentially calculated as follows:
A) 1 pill per day at $1 per pill, for 100 staff members for a 5 day course = Initial investment and reoccurring expense of $500.
B) 1 pill per day at $1 per pill, for 30 staff members for a 3 day course = Initial investment and reoccurring expense of $90.

5. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

This rule encompasses the basic needs for preparedness. There are no less intrusive methods for achieving this purpose.

6. Alternative Rules or Alternatives to Rulemaking Considered and Why Rejected.

The alternative is to leave the rule unmodified. Colorado does not benefit from a rule that is out of date and not aligned with emergency preparedness practice.

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.

Data used for analysis are lessons learned from previous incidents across the nation.

STAKEHOLDER COMMENT
for Amendments to

6 CCR 1009-5 Preparations for a Bioterrorist Event, Pandemic Influenza, or an Outbreak by a Novel and Highly Fatal Infectious Agent or Biological Toxin

The following individuals and/or entities were included in the development of these proposed rules:

Andrew Beadry-Kaiser Permanente, Jean Barrego-Pueblo County Health, Jenny Schmitz-Denver Health and Hospital Authority, Jim Johnsen-Northwest Visitor Nurse Association, Julie Zangari-Centura Health, Kris Stokke-SouthEast Regional EPR Generalist, Linda Underbrink-Foothills RETAC, Lisa Powel-El Paso County Health, Matt Concialdi-CDPHE/HFEMSD, Melanie Roth-Lawson-CDPHE/HFEMSD, Michele Askenazi-TriCounty Health, Nicole Comstock-CDPHE/DCEED, Richard Hoffman-original rule composer, Ron Seedorf-Colorado Rural Health, Teri Hulett-Colorado Hospital Association, Vicki Gillette-Yuma Hospital.

The following individuals and/or entities were notified that this rule-making was proposed for consideration by the Board of Health:

All local public health departments, all critical access hospitals, Kaiser Permanente, all rural health clinics, all federally qualified health centers, all RETACs, the GEEERC and CDPHE. Multiple letters of support were received for the current proposal of changes. Letters were received from Tri-County Health Department, El Paso County Health Department, Dr. Richard Hoffman, Denver Health and Hospital Authority, Summit Medical Center, Northwest Colorado Visiting Nurse Association, Foothills Regional Emergency Medical and Trauma Advisory Council, local public health-EMS-health facilities in the Southeast Colorado All-Hazards Region, the Colorado Rural Health Center, and the Colorado Hospital Association.

Summarize Major Factual and Policy Issues Encountered and the Stakeholder Feedback Received. If there is a lack of consensus regarding the proposed rule, please also identify the Department's efforts to address stakeholder feedback or why the Department was unable to accommodate the request.

The proposed changes started with feedback received from local stakeholders. Feedback was received from stakeholders and the Board of Health. This feedback has been incorporated into the changes provided.

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 proposed changes impact Coloradoans equally.

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Disease Control and Environmental Epidemiology Division

STATE BOARD OF HEALTH RULES AND REGULATIONS PERTAINING TO PREPARATIONS FOR A BIOTERRORIST EVENT, PANDEMIC INFLUENZA, OR AN OUTBREAK BY A NOVEL AND HIGHLY FATAL INFECTIOUS AGENT OR BIOLOGICAL TOXIN

6 CCR 1009-5

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

In Section 24-32-2103, C.R.S., emergency epidemic is defined as cases of an illness or condition, communicable or ~~noncommunicable~~non-communicable, caused by bioterrorism, pandemic influenza, or novel and highly fatal infectious agents or biological toxins.

Regulation 1. Preparations by Local Public Health Agencies for an Emergency Epidemic

1) Each ~~county and district~~local public health ~~department and public health nursing service~~agency in this state subject to Section 25-1-501 et seq. and section 25-1-10~~86~~ et seq., C.R.S., is required to maintain an up-to-date notification list for an emergency epidemic. The list shall include at a minimum general or critical access hospitals, regional emergency medical and trauma advisory councils, rural health or community health centers and the local emergency management agencies within the jurisdiction of the local public health agency. ~~The~~Each local public health agency is required at least once per year: (a) to confirm the notification list is accurate and up to date, and (b) to conduct notification ~~tests~~test or real incident communications by a broadcast fax or another communications method for rapid notification ~~at least twice per year~~.

2) Each ~~county and district~~ local public health ~~department~~agency in this state subject to Section 25-1-501 et seq., C.R.S., ~~was~~is required to sign a uniform mutual aid agreement ~~in 2001~~ with all other ~~county and district~~local public health ~~departments~~agencies subject to Section 25-1-501 et seq., C.R.S., that obligates the ~~county or district public health department~~agency to render aid during an emergency epidemic unless the ~~county or district public health department~~agency needs to withhold resources necessary to provide reasonable protection for its own jurisdiction. ~~If not already done, each public health nursing service and county and district public health department subject to section 25-1-601 et seq., C.R.S., must sign by December 31, 2007 a uniform mutual aid~~The agreement ~~with all other county and district public health departments and public health nursing services subject to section 25-1-501 and 25-1-601 et seq., C.R.S., that obligates~~ must be reviewed by the ~~county or district public health department or county health nursing service to render aid during an emergency epidemic unless the county or district public health department or public health nursing service needs to withhold resources necessary to provide reasonable protection for its own jurisdiction~~participating agencies at least~~a minimum~~ every 5 years.

~~1.~~ Each ~~county and district~~ local public ~~local~~ health ~~department~~agency subject to Section 25-1-501 et seq., C.R.S., shall maintain an agency response plan and associated ~~e~~Emergency ~~s~~Support ~~f~~Function #8 – or the ~~h~~Health and ~~m~~Medical annex to the local emergency operations plan that mirrors the National Response ~~plan~~Framework that the agency will implement when the governor declares a disaster emergency that is the result of an occurrence or imminent threat of an emergency epidemic. The plan, and associated annex, shall be reviewed ~~and~~, updated ~~annually. Each county and district public health department shall submit the plan (or revised plan)~~as needed, and submitted at least every 3 years~~,~~ to the Colorado Department of Public Health and Environment, ~~the Colorado Board of Health~~ and local board of health~~, if applicable, by July 31 of each year. Each public health nursing service~~

~~subject to 25-1-601 et seq., C.R.S., shall prepare a plan and associated emergency support function #8 – health and medical annex and the local emergency operations plan that the agency will implement when the governor declares a disaster emergency~~

3) ~~that is the result of an occurrence or imminent threat of an emergency epidemic. The plan and associated annex shall be reviewed and updated annually. Each public health nursing service shall submit the plan to the Colorado Department of Public Health and Environment (CDPHE), the Colorado Board of Health and local board of health and/or local county commissioners, if applicable, a revised plan by July 31 of each year.~~ In addition, the ~~county or district~~local public health ~~department or the public health nursing service~~agency shall ensure that ~~provide~~review with and make available a copy of the ~~annual revision~~ plan(s) and associated annex ~~submitted pursuant to these regulations~~ are reviewed with and made available to ~~the~~ its jurisdiction's local offices of emergency management, to all general or critical access hospitals, ~~(or, in the absence of a hospital,~~ to rural health clinics or community health centers~~)~~ and to all regional emergency medical and trauma services advisory councils ~~within the jurisdiction of the local public health agency by July 31 of each year. Each county or district public health department or the public health nursing service~~ (RETAC). The plan shall ~~conduct at least one annual exercise of its plan that incorporates at least four of the~~address the following areas ~~listed below.~~:

~~Each county or district public health department shall complete an after-action report and improvement matrix within 60 days of exercise completion.~~

~~The plan shall address the following areas:~~

i) Organization and assignment of ~~all~~ employees of the agency to work on controlling the emergency epidemic using the National Incident Management System;

ii) Having sufficient supplies and a process for the provision of personal protective equipment ~~against bacterial and viral infections~~ to employees who are assigned to work in areas where they may be exposed to ill and contagious persons or to infectious agents and waste. ~~;~~ ~~p~~Personal protective equipment shall, at a minimum, be the equipment and supplies used to achieve standard precautions against bacterial and viral infections. The agency shall provide training in the use of such equipment and supplies;

iii) ~~Procurement~~Distribution of the procured and ~~storage of at least five days~~stored three days' supply of ~~doxycycline or other~~an antibiotic~~,~~ as determined by ~~the Colorado Department of Public Health and Environment,~~CDPHE, that is effective against category A bacterial agents to be used as prophylaxis for all employees immediately responding. The plan shall include procurement of another antibiotic for a small number of employees who may be unable to take ~~doxycycline~~the antibiotic of first choice;

iv) An emergency, after-hours call-down list of persons who may be needed to organize and respond to an emergency epidemic; such list shall include persons with experience and training in communicable disease epidemiology

~~A) An emergency, after-hours call-down list of persons who may be needed to organize and respond to an emergency epidemic; such list shall include persons with experience and training in communicable disease epidemiology and incident management;~~

Creation of an ~~agency~~ operations center within the agency or participation in a local emergency operations center for the purpose of (i) centralizing telephone, radio, and other electronic communications; (ii) compiling surveillance data; and (iii) maintaining a log of operations, decisions, resources, and orders necessary to control the epidemic; (iv) responding to executive orders of the governor regarding the emergency epidemic and (v) managing~~ing~~ mass dispensing and vaccination activities;

v) ~~Creation of teams to: (i~~ (vi) monitoring the situation, including infection control, in each hospital within the agency's jurisdiction, doing this on-site as necessary and with assistance

from the Colorado Department of Public Health and Environment as appropriate; (~~ii) assess~~vii) assessment and ~~manage~~management of infection control in the community outside of the hospital; (viii) assessment and ~~(iii) assess and manage~~management, in coordination with hospitals and the county coroner, the disposal of human corpses in accordance with emergency support function #8 – health and medical, and (ix) manage and dispense medical countermeasures to the public;

~~(iv) manage and dispense pharmaceuticals to the public;~~

vi) Organization, receipt, staffing, security, and logistics of the distribution and delivery of antibiotics, antiviral medications, vaccines, or other ~~medications and supplies~~ medical countermeasures delivered from the Strategic National Stockpile (SNS) needed in an emergency epidemic following the provisions of Emergency Support Function #8 health and medical;

vii) Identification of ~~at least two public spokespersons who will coordinate~~a public information ~~with the Colorado Department of Public Health~~officer who will assure sufficient coordination and ~~Environment and are responsible~~personnel for multiple operational periods for providing information to the citizens of their jurisdiction about how to protect themselves, what actions are being taken to control the epidemic, and when the epidemic is over, and; ~~and~~

viii) Implementation of a back-up communications system, such as 800 megahertz radios or amateur radio emergency services that will be used ~~to communicate with local emergency management agencies~~for communication if and when telephone communications are disabled or not functioning.

4) Each local public health agency shall conduct at least one exercise of its plan every three years.~~, of its plan.~~ If the agency activates its plan in response to one or more actual emergencies, these emergencies can serve in place of emergency response exercises. Each local public health agency shall complete an after-action report and improvement matrix within 60 days of exercise or real incident completion.

Regulation 2. Preparations by General or Critical Access Hospitals for an Emergency Epidemic

1) Each general or critical access hospital in this state is required to maintain an up-to-date notification list for an emergency epidemic. The list shall include any satellite clinics~~,~~; acute care facilities, or trauma centers operated by the hospital; offices of physicians and health care providers on the staff of the hospital, as available; and the local public health agency and local emergency management office serving the county in which the hospital is located. ~~The~~Each general or critical access hospital is required at least once per year: (a) to confirm the notification list is accurate and up to date, and (b) to conduct notification ~~tests~~ test or real incident communications by a broadcast fax or ~~by~~ another communications method for rapid notification ~~at least twice per year~~.

~~1.~~ Each general or critical access hospital in this state shall maintain a plan that the hospital will implement when the governor declares a disaster emergency that is the result of an occurrence or imminent threat of an emergency epidemic. The plan shall be reviewed and updated ~~annually and each general or critical access hospital in this state shall submit to the Colorado Board of Health a revised plan by July 31 of each year~~at least every 3 years. In addition, the general or critical access hospital ~~shall provide~~ shall review with and make available a copy of the ~~annual revision~~plan(s) submitted pursuant to these regulations to ~~the~~its jurisdiction's local ~~public health agency, the local office~~offices of emergency management, local public health or designated health and medical support lead agency, and ~~the~~their regional emergency medical and trauma services advisory councils, and healthcare coalition.~~council in the region in which the hospital is located by July 31 of each year. Each general or critical access hospital in this state shall conduct at least one annual exercise of its plan that incorporates at least four of the areas listed below.~~

2) The plan shall address the following areas:

i) Organization~~: using National Incident Management System principles,~~ and assignment~~, reassignment, and alteration of normal work schedules of all~~ of employees and medical staff ~~and all employees~~ of the general or critical access hospital ~~who may be called and managed care organization~~ to work on ~~to work during an~~ controlling the emergency epidemic using the National Incident Management System;

ii) Having sufficient supplies and a process for the provision of personal protective equipment ~~against bacterial and viral infections~~ to all staff and employees who are assigned to work in areas where they may be exposed to ill and contagious persons or to infectious agents and waste. ~~; p~~Personal protective equipment shall, at a minimum, be the equipment and supplies used to achieve standard precautions against bacterial and viral infections. The hospital shall provide training in the use of such equipment and supplies;

iii) ~~Procurement and storage of at least five days~~Distribution of the procured and stored three days' supply of ~~doxycycline or other~~ an antibiotic~~,~~ as determined by ~~the Colorado Department of Public Health and Environment,~~CDPHE, that is effective against category A bacterial agents to be used as prophylaxis for all employees and medical staff immediately responding. The plan shall include procurement of another antibiotic for a small number of employees who may be unable to take ~~doxycycline~~the antibiotic of first choice;

iv) ~~An emergency call-down list~~A process for recruiting and credentialing ~~of off-duty or retired health care providers~~volunteers who may be asked to work or volunteer as needed to respond to an emergency epidemic;

Creation of ~~a facility~~an operations center within the hospital for the purposes of: (i) centralizing telephone, radio, and other electronic communications; (ii) compiling morbidity and mortality data including the number of patients, number of available beds, and number of working staff and employees; (iii) receiving and responding to executive orders of the governor regarding the emergency epidemic; and (iv) maintaining a log of operations, decisions, and resources necessary to maintain operations during the epidemic;

v) ~~Creation of teams to assess~~ (v) assessment and ~~manage: (i)~~ management of infection control within the hospital~~;~~ and (~~ii~~vi) in coordination with local public health departments and the county coroner, of the disposal of human corpses;

vi) Security of the ~~hospital~~ facility and traffic management necessary to control large and unruly crowds;

~~A) Rapid transport of human diagnostic specimens to the state laboratory or as otherwise directed by the Colorado Department of Public Health and Environment;~~

vii) ~~Prevention~~Rapid transport of human diagnostic specimens to the state laboratory or as otherwise directed by the Colorado Department of Public Health and Environment;

~~vii)~~viii) Implementation of infection control measures to prevent the spread of the ~~epidemic~~ disease within the hospital from persons ill with the condition causing the ~~emergency epidemic~~disease to staff, employees, and other patients of the hospital; ~~and~~

~~viii)~~ix) Coordination and communication with other hospitals and pre-hospital care agencies to assure that patients with extreme, life-threatening, or emergency medical or traumatic conditions are not ~~unnecessarily~~ diverted from the hospital; ~~and~~

~~ix)~~x) Triaging all persons during an emergency epidemic in a manner that protects the facility, staff, and public and routing these persons to the appropriate facility based on their medical status~~.~~;

~~x)~~xi) Organization, staffing, security, and logistics of the receipt, distribution and delivery of antibiotics, antiviral medications, vaccines, or other medical countermeasures delivered from the Strategic National Stockpile (SNS) needed in an emergency epidemic for employees and medical staff, and;

~~xi)~~xii) Implementation of a back-up communications system, such as 800 megahertz radios or amateur radio emergency services, that will be used ~~to communicate with local emergency management agencies~~for communication if and when telephone communications are disabled or not functioning;

3) Each general and critical access hospital shall conduct at least one exercise of its plan every three years~~, of its plan~~. If the hospital activates its plan in response to one or more actual emergencies, these emergencies can serve in place of emergency response exercises. Each general and critical access hospital shall complete an after-action report and improvement matrix within 60 days of exercise or real incident completion.

Regulation 3. Preparations by ~~Managed Care Organizations,~~ Rural Health Clinic and Community Health Center for an Emergency Epidemic

1) Each ~~managed care organization,~~licensed rural health clinic and community health center ~~licensed in this state by the division of insurance and~~ that operates medical facilities or pharmacies is required to maintain an up-to-date notification list for an emergency epidemic. The list shall include any satellite clinics, acute care facilities, or trauma centers operated by the organization, as well as offices of physicians and health care providers working as full-time contractors or staff of the organization. ~~The organization~~Each rural health clinic and community health center is required at least once per year: (a) to confirm the notification list is accurate and up to date, and (b) to conduct notification ~~tests~~ test or real incident communications by a broadcast fax or another communications method for rapid notification ~~at least twice per year~~.

2) Each ~~managed care organization~~, rural health clinic and community health center ~~operating medical facilities or pharmacies in this state~~providing acute care shall prepare a plan that the organization would implement when the governor declares a disaster emergency that is the result of an occurrence or imminent threat of an emergency epidemic. The plan shall be submitted to the Colorado ~~Board~~Department of Public Health ~~by December 31, 2007~~and Environment. The plan shall be reviewed and updated ~~annually thereafter and each managed care organization in this state shall submit to~~ at least every 3 years. In addition, ~~the~~each ~~Colorado Board of Health, local board of health, and local county commissioners, if applicable, a revised plan. Each managed care organization;~~ rural health clinic and community health center ~~in this state shall conduct at least one annual exercise of their~~shall ensure that~~review with and make available~~ a copy of the plan(s) are reviewed with and made available~~submitted pursuant to these regulations~~ to its appropriate community partners. The plan ~~that incorporates at least two of~~shall address the following areas ~~listed below.~~:

~~The plan shall address~~Having sufficient supplies and a process for the ~~following areas:~~

~~A) Rapid transport~~provision of ~~human diagnostic specimens to the state laboratory or as otherwise directed by the Colorado Department of Public Health and Environment from facilities that are operated by the organization;~~

~~B) A rapid method of determining the inventory of broad spectrum antibiotics in facilities and pharmacies that are operated by the organization, including pill counts of doxycycline or other antibiotic, as determined by Colorado Department of Public Health and Environment;~~

~~C) A rapid method of securing and protecting antibiotics, antiviral medications, vaccines, and~~

personal protective equipment ~~within facilities and pharmacies that are operated by the organization~~ to employees who are assigned to work in areas where they may be exposed to ill and contagious persons or ~~against bacterial and viral infections to employees who are assigned to work in areas where they may be exposed to ill and contagious persons~~ to infectious agents and waste. ~~; p~~Personal protective equipment shall, at a minimum, be the equipment and supplies used to achieve standard precautions against bacterial and viral infections.~~; and~~

i) ~~Delivery or transfer of the supplies listed~~. The agency shall provide training in ~~paragraph C to authorized personnel as directed by executive orders of the governor.~~the use of such equipment and supplies;

ii) Rapid transport of human diagnostic specimens to the state laboratory or as otherwise directed by the Colorado Department of Public Health and Environment;

~~ii)~~iii) Assuringe a process for acquiring at least three days' supply of an antibiotic as determined by CDPHE, that is effective against category A bacterial agents, to be used as prophylaxis for all employees immediately responding. The plan shall include a process for acquiring another antibiotic for a small number of employees who may be unable to take the antibiotic of first choice, and;

iv) Implementation of a back-up communications system, such as 800 megahertz radios or amateur radio emergency services that will be used ~~to communicate with local emergency management agencies~~for communication if and when telephone communications are disabled or not functioning.

3) Each rural health clinic and community health center shall conduct at least one exercise of its plan every three years~~, of its plan~~. If the rural health clinic or community health center activates its plan in response to one or more actual emergencies, these emergencies can serve in place of emergency response exercises. Each rural health clinic and community health center shall complete an after-action report and improvement matrix within 60 days of exercise or real incident completion.

Regulation 4. Preparations by Regional Emergency Medical and Trauma Services Advisory Councils for an Emergency Epidemic

1) Each regional emergency medical and trauma services advisory council in this state is required to maintain an up-to-date notification list of organizations for an emergency epidemic. The list shall include all pre-hospital care organizations within the jurisdiction of the regional emergency medical and trauma services advisory council. The council is required at least once per year: (a) to confirm the notification list is accurate and up to date, and (b) to conduct notification ~~tests~~ test or real incident communications by a broadcast fax or ~~by~~ another communications method for rapid notification ~~of these organizations at least twice per year~~.

2) Each regional emergency medical and trauma services advisory council shall advise the pre-hospital care organizations within its jurisdiction to develop a plan that the organization would implement when the governor declares a disaster emergency that is the result of an occurrence or imminent threat of an emergency epidemic. The organizations shall be advised that the plan should address the following areas:

i) ~~Organization:~~ Using the National Incident Management System, assignment, reassignment, and alteration of normal work schedules of all staff and all employees of the organization who may be called on to work during an emergency epidemic;

ii) Having sufficient supplies and a process for the provision of personal protective equipment ~~t against bacterial and viral infections~~ to ~~all staff and~~ employees who are assigned to work in areas where they may be exposed to ill and contagious persons or to infectious agents and

waste. ; pPersonal protective equipment shall, at a minimum, be the equipment and supplies used to achieve standard precautions against bacterial and viral infections. The pre-hospital care organizationagency shall provide training in the use of such equipment and supplies;

A) Procurement, storage, and distribution of at least five daysthree days' supply of doxycycline or other an antibiotic, as determined by Colorado Department of Public Health and EnvironmentCDPHE, that is effective against category A bacterial agents to be used as prophylaxis for all employees. and medical staff immediately responding. The plan shouldshall include procurement of another antibiotic for a small number of employees who may be unable to take doxycycline;

iii) An emergency call-down listthe antibiotic of off-duty or retired first choice;

iii)iv) A process for recruiting and credentialing of volunteer emergency medical service providers who may be asked to work or volunteer as needed to respond to an emergency epidemic, and.;

v) Implementation of a back-up communications system, such as 800 megahertz radios or amateur radio emergency services, that will be used to communicate with local emergency management agenciesfor communication if and when telephone communications are disabled or not functioning;

Regulation 5. Preparations by the Colorado Department of Public Health and Environment for an Emergency Epidemic

1) The Colorado Department of Public Health and Environment (CDPHE) is required to maintain an up-to-date notification list for an emergency epidemic. The list shall include the Governor's Office, members of the Governor's Expert Emergency Epidemic Response Committee, general or critical access hospitals, county and districtlocal public health departmentsagencies, regional emergency medical and trauma services advisory councils, and the state Division of Emergency Management. The Colorado Department of Public Health and EnvironmentSafety. The CDPHE is required to at least once per year: (a) to confirm the notification list is accurate and up to date, and (b) to conduct notification tests test or real incident communications by a broadcast fax or by another communications systemmethod for rapid notification of these contacts at least twice per year.

The Colorado Department of Public Health and Environment

2) The CDPHE is required to sign a uniform mutual aid agreement with all other local public health agencies subject to Section 25-1-501 et seq., C.R.S., which obligates the CDPHE to render aid during an emergency epidemic unless the CDPHE needs to withhold resources necessary to provide reasonable protection statewide. The agreement must be reviewed by the participating agencies at leasta minimum every 5 years.

2)3)The CDPHE shall prepare an internal response plan and associated Emergency Support Function #8 health and medical annex to the state emergency operations plan that mirrors the National Response Plan (NRP)Framework that the Colorado Department of Public Health and EnvironmentCDPHE will implement when there is an occurrence or imminent threat of an emergency epidemic. The plan shall be reviewed and updated annuallyevery 3 years and shall be submitted to the Colorado Board of Health with the revisions by July 31 of each year, and . The plan shall provide the revised plan to local public health agencies. The Colorado Department of Public Health and Environment will submit the revised Emergency Support Function #8 health and medical annex to the Division of Emergency Management by July 31 of each year. The Colorado Department of Public Health and Environment shall conduct at least one annual exercise of the plan that incorporates at least four of theaddress the following areas listed below.:

The plan shall address the following areas:

i) Organization~~:~~ using the National Incident Management System and assignment of ~~all~~ employees of ~~T~~the Colorado Department of Public Health and Environment to work on controlling the emergency epidemic;

ii) Having sufficient supplies and a process for the provision of personal protective equipment ~~against bacterial and viral infections~~ to employees who are assigned to work in areas where they may be exposed to ill and contagious persons or to infectious agents and waste. ~~;~~ ~~p~~Personal protective equipment shall, at a minimum, be the equipment and supplies used to achieve standard precautions against bacterial and viral infections. ~~,~~The agency shall provide training in the use of such equipment and supplies;

iii) ~~Procurement~~Distribution of the procured and ~~storage of at least five days supply~~stored three days' supplies of ~~doxycycline or other~~an antibiotic~~, as determined by The Colorado Department of Public Health and Environment,~~ that is effective against category A bacterial agents to be used as prophylaxis for all employees immediately responding. The plan shall include procurement of another antibiotic for a small number of employees who may be unable to take ~~doxycycline~~the antibiotic of first choice;

iv) An emergency, after-hours call-down list of persons who may be needed to organize and respond to an emergency epidemic; such list shall include persons with experience and training in communicable disease epidemiology;

~~A) An emergency, after-hours call-down list of persons who may be needed to organize and respond to an emergency epidemic; such list shall include persons with experience and training in communicable disease epidemiology and incident management;~~

v) Maintenance of an agency department operations center within the Colorado Department of Public Health and Environment for the purpose of (i) centralizing telephone, radio, and other electronic communications; (ii) compiling surveillance data; (iii) maintaining a log of operations, decisions, resources, and orders necessary to control the epidemic; and (iv) apportionment of pharmaceuticals; (v) creation of teams to assist local public health agencies~~ to: (~~i; (vi) monitoring the situation ~~in each hospital~~statewide and especially where the emergency epidemic is occurring; (~~ii) assess~~vii) assessment and ~~manage~~management of infection control ~~in the community outside of the hospital; and (iii) assess~~statewide; and ~~manage~~(viii) assessment and management, in coordination with hospitals and the county coroner, of the disposal of human corpses in accordance with Emergency Support Function #8 – health and medical;

vi) Assurance of the appropriate distribution and delivery of antibiotics, antiviral medications, vaccines, or other medications delivered from the Strategic National Stockpile (SNS) needed in an emergency epidemic to locations determined by local public health agencies or local emergency management agencies;

vii) Identification of ~~at least two~~a public information officer~~spokespersons~~ responsible for providing information to the citizens of the state about how to protect themselves, what actions are being taken to control the epidemic, and when the epidemic is over; ~~and~~

viii) Implementation of a back-up communications system, such as 800 megahertz radios or amateur radio emergency services, that will be used to communicate with the state office of emergency management and local public health agencies if and when telephone communications are disabled or not functioning; and maintenance of a rapid notification system, and~~.~~;

~~2. The Colorado Department of Public Health and Environment shall provide to each county and district local public health department subject to Section 25-1-501 et seq., C.R.S., and to the state Division of Emergency Management a copy of the plan submitted pursuant to these regulations. The plan shall be provided upon request to general and critical access hospitals, managed care~~

~~organizations, regional emergency medical and trauma services advisory councils, and local offices of emergency management.~~

ix) Maintenance of~~ain~~ a rapid transport system for the delivery of human diagnostic specimens to the state laboratory.

4) The CDPHE shall conduct at least one exercise of its plan every three years~~, of its plan~~. If the CDPHE activates its plan in response to one or more actual emergencies, these emergencies can serve in place of emergency response exercises. CDPHE shall complete an after-action report and improvement matrix within 60 days of exercise or real incident completion.

Regulation 6. Assessing Compliance with these Regulations

For the purposes of determining eligibility for the protections of section 24-~~32~~33.5-~~721~~11.5, C.R.S., the Colorado Department of Public Health and Environment shall review plans submitted ~~to the Colorado Board of Health~~ pursuant to Regulations ~~Two~~One through Four, may examine exercise evaluations and may examine and inspect faxes transmitted or documentation of other communications methods used for rapid notification of contacts and agencies pursuant to Regulations ~~Two~~One through Four.

~~A) Provide staffing to and participation in activities of the local emergency operations center (s) for the purpose of (i) centralizing telephone, radio, and other electronic communications; (ii) compiling surveillance data; and (iii) maintaining a log of operations, decisions, resources, and orders necessary to control the epidemic;~~

~~B) Creation of a system or participation in an organized system to: (i) monitor the situation, including infection control, in each hospital within the public health nursing service's jurisdiction, doing this on-site as necessary and with assistance from the state health department as appropriate; (ii) assess and manage infection control in the community outside of the hospital; and (iii) assess and manage, in coordination with hospitals and the county coroner, the disposal of human corpses;~~

~~C) The organization, staffing, security, and logistics of the distribution and delivery of antibiotics, antiviral medications, vaccines, or other medications needed in an emergency epidemic following the provisions of State Emergency Function #8, "Health, Medical and Mortuary";~~

~~D) Identification of public spokespersons responsible for providing information to the citizens of their jurisdiction about how to protect themselves, what actions are being taken to control the epidemic, and when the epidemic is over; and~~

~~E) Implementation of a back-up communications system that will allow communication with the local emergency response structure if and when telephone communications are disabled or not functioning;~~

COLORADO
Board of Health
Department of Public Health & Environment

Notice of Public Rule-Making Hearing

Scheduled for July 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 July 15, 2015 at 10 a.m. in the Sabin-Cleere Conference Room of the Colorado Department of Public Health and Environment, Bldg. A, First Floor, 4300 Cherry Creek Drive, South, Denver, CO 80246, to consider the promulgation for modifications to 6 CCR 1009-5, Preparations for a Bioterrorist Event, Pandemic Influenza, or an Outbreak by a Novel and Highly Fatal Infectious Agent or Biological Toxin.

The proposed rules have been developed by the Office of Emergency Preparedness and Response, Community Relations Division of the Colorado Department of Public Health and Environment pursuant to C.R.S. §24-33.5-703, §25-1-501 and §25-1-108.

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 seven (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, Office of Emergency Preparedness and Response, Community Relations Division, A2-4350, 4300 Cherry Creek Drive S., Denver, CO 80246, (303)692-2669.

The Board encourages all interested persons to participate in the hearing by providing written data, views, or comments, or by making oral comments at the hearing. At the discretion of the Chair, oral testimony at the hearing may be limited to three minutes or less depending on the number of persons wishing to comment. Pursuant to 6 CCR 1014-8, §3.02.1, written testimony must be submitted no later than five (5) calendar days prior to the rulemaking hearing. Written testimony is due by 5:00 p.m., Thursday, July 9, 2015. Persons wishing to submit written comments should submit them to: Colorado Board of Health, ATTN: Jamie L. Thornton, Program Assistant, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South EDO-A5, Denver, Colorado 80246-1530 or by e-mail at: cdphe.bohrequests@state.co.us

Dated this 20th day of May, 2015.

Deborah Nelson
Board of Health Administrator

Notice of Proposed Rulemaking

Tracking number

2015-00313

Department

1505 - Department of State

Agency

1505 - Secretary of State

CCR number

8 CCR 1505-1

Rule title

ELECTIONS

Rulemaking Hearing

Date

07/07/2015

Time

02:00 PM

Location

Aspen Conference Room (3rd floor) of the Secretary of State's Office, 1700 Broadway, Denver CO 80290

Subjects and issues involved

Please see attached Notice of Rulemaking, including a draft statement of basis and draft proposed rules.

Statutory authority

Please see attached Notice of Rulemaking, including a draft statement of basis and draft proposed rules.

Contact information

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Title

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Working Draft of Proposed Rules

Office of the Colorado Secretary of State
Election Rules
8 CCR 1505-1

May 28, 2015

Disclaimer:
In accordance with the State Administrative Procedure Act, this draft is filed with the Secretary of State and submitted to the Department of Regulatory Agencies.[1]

This is a preliminary draft of the proposed rules that may be revised before the July 7, 2015 rulemaking hearing. If changes are made, a revised copy of the proposed rules will be available to the public and a copy will be posted on the Department of State's website no later than **July 2, 2015**.[2]

Please note the following formatting key:

Font effect	Meaning
Sentence case	Retained/modified current rule language
SMALL CAPS	New language
~~Strikethrough~~	Deletions
Italic blue font text	Annotations

Amendments to 8 CCR 1505-1 follow:

Amendments to Rule 1.1.46(a):

1.1.46 "Watcher" has the same meaning as in section 1-1-104(51), C.R.S.

(a) ~~A watcher may be appointed for a recall election in the same manner as in a primary election.~~ WATCHERS MAY BE APPOINTED FOR A RECALL ELECTION BY EACH QUALIFIED SUCCESSOR CANDIDATE, THE PROPONENTS AND OPPONENTS OF THE RECALL BALLOT ISSUE, AND EACH PARTICIPATING POLITICAL PARTY FOR A PARTISAN RECALL ELECTION.

[The remainder of Rule 1.1.46 is retained unaltered]

Amendments to Rule 2.3 through 2.5:

2.3 ~~When an elector registers to vote, the elector must provide a verifiable driver's license or state identification card number, or last four digits of his or her social security number.~~ IF

1 Sections 24-4-103(2.5) and (3)(a), C.R.S. (2014). A draft must be submitted to the Department at the time that a notice of proposed rulemaking is filed with the Secretary of State.
2 Section 24-4-103(4)(a), C.R.S. (2014). "[A]ny proposed rule or revised proposed rule by an agency which is to be considered at the public hearing…shall be made available to any person at least five days prior to said hearing."

AN ELECTOR HAS A DRIVER'S LICENSE NUMBER OR STATE IDENTIFICATION NUMBER, HE OR SHE MUST PROVIDE IT WHEN REGISTERING TO VOTE. IF THE ELECTOR HAS NEITHER, HE OR SHE MAY PROVIDE THE LAST FOUR DIGITS OF HIS OR HER SOCIAL SECURITY NUMBER. If the elector states that he or she does not have a driver's license, state identification card number, or social security number, OR IF THE CLERK CANNOT VERIFY THE ELECTOR'S INFORMATION IN SCORE, the county clerk must register the elector and mark the registration record "ID required".

2.3.1 THE COUNTY MUST PROCESS THE HELP AMERICA VOTE VERIFICATION FILE ON A MONTHLY BASIS BY VERIFYING SOCIAL SECURITY NUMBERS AND REMOVE THE "ID REQUIRED" VERIFIED RECORDS.

~~2.3.1~~ 2.3.2 As used in section 1-1-104(19.5), C.R.S., government document means a document issued by a city, county, state, or federal government.

[The remainder of New Rule 2.3.2, formerly Rule 2.3.1, is retained unaltered]

~~2.3.2~~ 2.3.3 As used in section 1-1-104(19.5)(a)(VII), C.R.S., "current" means that the date of the document is within 60 days of the date submitted for identification purposes unless the document states a longer billing cycle.

~~2.3.3~~ 2.3.4 Documents issued under section 42-2-505, C.R.S., are not acceptable forms of identification for any purpose under the Uniform Election Code of 1992 and these rules.

2.4 Treatment of INCOMPLETE NEW REGISTRATION applications ~~where the elector fails to provide required information~~

[The remainder of Rule 2.4 is retained unaltered]

2.5 Changes to an elector's EXISTING voter registration record

2.5.1 If an elector submits a change to his or her voter registration record and fails to include the information required by sections 1-2-216 or 1-2-219, C.R.S., the county clerk ~~must~~ MAY not make the requested change unless the county clerk can ~~confidently identify the voter~~ ESTABLISH MINIMUM MATCHING CRITERIA. ~~The~~ IF THE county clerk CANNOT ESTABLISH MINIMUM MATCHING CRITERIA, THE COUNTY CLERK MAY NOT CHANGE THE ELECTOR'S STATUS AND must notify the ~~voter~~ ELECTOR of the additional information that is required to process the request.

[The remainder of Rule 2.5 is retained unaltered]

Amendments to Rule 2.7.1:

2.7 Minimum matching criteria

2.7.1 Except as provided in section 1-2-302.5, C.R.S., the county clerk ~~must~~ MAY not transfer, consolidate, or cancel a voter registration record unless the APPLICABLE

minimum matching criteria as set forth in sections 1-2-603 ~~and~~ OR 1-2-604, C.R.S., are met. If the minimum matching criteria are not met the county clerk must send a letter to the voter requesting confirmation of the missing or non-matching information in order to transfer, consolidate, or cancel the record.

[The remainder of Rule 2.7 is retained unaltered]

Amendments to Rule 2.10:

2.10 ~~20-day applicants~~ NEW VOTER NOTIFICATION under section 1-2-509(3), C.R.S.

2.10.1 When a county clerk ~~deems~~ DETERMINES an applicant "not registered" upon receipt of an undeliverable new voter notification in accordance with section 1-2-509(3), C.R.S., the county clerk must mail a confirmation card. The confirmation card must meet the requirements of section 1-1-104(2.8), C.R.S.

2.10.2 If the applicant returns the signed confirmation card within 90 days the county clerk must register the applicant using the date of the original application.

2.10.3 During the 22 days before an election, the county clerk must defer processing undeliverable ~~20-day~~ NEW VOTER notifications. After the election is closed, the clerk must ~~deem~~ DETERMINE an applicant "not registered" under section 1-2-509(3), C.R.S., only if the applicant did not vote in the election.

~~2.12.1~~ 2.10.4 ~~When~~ IF AFTER THE 20-DAY PERIOD OUTLINED IN SECTION 1-2-509(3), C.R.S, the United States Postal Service returns a new voter notification ~~or confirmation card~~ to the county clerk as undeliverable, or provides the clerk with a postcard notice of mail forwarding, the county clerk must mark the voter's record "Inactive ~~– returned mail~~" and mail a confirmation card. ~~Where a confirmation card sent under this Rule is returned as undeliverable, the county is not required to mail another card.~~

[Current Rule 2.12.1 is amended and recodified as New Rule 2.10.4]

Amendments to Rules 2.12 and 2.13:

2.12 List Maintenance under section 8 of the National Voter Registration Act of 1993

~~2.12.1 When the United States Postal Service returns a new voter notification or confirmation card to the county clerk as undeliverable, or provides the clerk with a postcard notice of mail forwarding, the county clerk must mark the voter's record "Inactive – returned mail" and mail a confirmation card. Where a confirmation card sent under this Rule is returned as undeliverable, the county is not required to mail another card.~~

[Current Rule 2.12.1 is amended and recodified as New Rule 2.10.4; subsequent rules are

renumbered as follows:]

~~2.12.2~~ 2.12.1 The Secretary of State will provide monthly National Change of Address (NCOA) data under section 1-2-302.5, C.R.S., to the county clerk by the fifth of each month.

[The remainder of New Rule 2.12.1, formerly Rule 2.12.2, is retained unaltered]

~~2.12.3~~ 2.12.2 In accordance with section 1-2-605(7), C.R.S., no later than 90 days following a General Election, the county clerk in each county must cancel the registrations of electors:

[The remainder of New Rule 2.12.2, formerly Rule 2.12.3, is retained unaltered]

~~2.12.4~~ 2.12.3 The county must process all records designated for cancelation by the Secretary of State within 21 days of receipt.

~~2.12.5~~ 2.12.4 The county must process and mail all confirmation cards using SCORE so that the elector's voter registration record audit log shows the date on which the county printed or extracted the confirmation card.

~~2.12.6~~ 2.12.5 To the extent a county has records of confirmation cards it has generated and sent outside of SCORE, the county must retain those records as election records under section 1-7-802, C.R.S.

2.13 Voter registration at a voter service and polling center

2.13.1 A person registering voters or updating voter registration information in a voter service and polling center must:

(a) Be AN ELECTION JUDGE, a permanent or temporary county employee, state employee, or temporary staff hired by the county clerk;

~~(b) Successfully pass the criminal background check described in Rule 6.5;~~ and

~~(c)~~ (B) Complete a training course provided by OR APPROVED BY the Secretary of State.

[Current Rule 2.13.2 is retained unaltered]

New Rule 4.3.3:

4.3.3 IN ANY ODD-YEAR NOVEMBER COORDINATED ELECTION IN WHICH THERE IS A STATEWIDE ISSUE ON THE BALLOT, THE CANVASS BOARD MEMBERS MUST BE APPOINTED IN ACCORDANCE WITH SECTION 1-10-101, C.R.S.

Amendments to Rule 6.4 and repeal of Rule 6.5:

6.4 A supervisor judge in a voter service and polling center must~~:~~

~~6.4.1 Successfully pass the criminal background check described in Rule 6.5. Any person who has been convicted of an election offense or an offense with an element of fraud is prohibited from handling voter registration applications or conducting voter registration and list maintenance activities.~~

~~6.4.2 Complete~~ COMPLETE a training course ~~provided by~~ APPROVED BY the Secretary of State.

~~6.5 The county clerk must arrange for a criminal background check on a supervisor judge and each staff member conducting voter registration activities.~~

~~(a) The criminal background check must be conducted by or through the Colorado Bureau of Investigation, the county sheriff's department in accordance with section 24-72-305.6(3), C.R.S., or similar state or federal agency.~~

~~(b) A person convicted of an election offense or an offense containing an element of fraud may not:~~

~~(1) Handle voter registration applications or conduct voter registration and list maintenance activities; or~~

~~(2) Have access to a code, combination, password, or encryption key for the voting equipment, ballot storage area, counting room, or tabulation workstation.~~

Repeal of Rule 7.2.3(c) concerning ballots and ballot packets:

~~(c) In coordinated elections, the county clerk must mail ballots to all active eligible electors of each political subdivision.~~

Amendments to Rules 7.2.5 through 7.2.7:

7.2.5 ~~Effective January 1, 2015, each~~ EACH mail ballot return envelope and mail ballot instruction must include a statement informing voters that it is a violation of law to ~~drop off more than ten ballots~~ RECEIVE MORE THAN TEN BALLOTS FOR MAILING OR DELIVERY in any election.

~~7.2.6 Effective January 1, 2015, each mail ballot return envelope must include the following: "For third party delivery: I am voluntarily giving my ballot to (name and address) for delivery. I have marked and sealed my ballot in private and have not allowed any person to observe the marking of the ballot, except for those authorized to assist voters under state or federal law.~~"

7.2.6 EFFECTIVE JANUARY 1, 2016, EACH MAIL BALLOT RETURN ENVELOPE MUST INCLUDE THE FOLLOWING: "I AM VOLUNTARILY GIVING MY BALLOT TO (NAME AND ADDRESS) FOR DELIVERY ON MY BEHALF."

7.2.7 A COUNTY MUST ISSUE A MAIL BALLOT TO ANY ELIGIBLE ELECTOR WHO REQUESTS ONE IN PERSON AT THE COUNTY CLERK'S OFFICE BEGINNING 32 DAYS BEFORE AN ELECTION. [SECTION 1-7.5-107(2.7), C.R.S.]

Amendments to Rule 7.5.1:

7.5 Receipt and processing of ballots

7.5.1 ~~All~~ THE COUNTY CLERK MUST ADEQUATELY LIGHT ALL STAND-ALONE drop-off locations ~~must be monitored by~~ AND USE EITHER an election official or A video security surveillance recording system~~;~~ as defined in Rule ~~20~~ 1.1.42 TO MONITOR EACH LOCATION.

[The remainder of Rule 7.5.1 and Rules 7.5.2 through 7.5.4 are retained unaltered]

Amendments to Rule 7.5.5:

7.5.5 Election officials must record the number of ballot packets returned as undeliverable AND RECEIVE THE BALLOT PACKETS IN SCORE upon receipt.

Amendments to Rule 7.7:

7.7 Missing signature.

7.7.1 If a mail or provisional ballot return envelope lacks a signature, ~~the election official must contact the elector in writing no later than two calendar days after election day.~~ THE COUNTY CLERK MUST FOLLOW THE PROCEDURES FOR DISCREPANT SIGNATURES OUTLINED IN SECTION 1-7.5-107.3(2)(A), C.R.S., EXCEPT AS PROVIDED IN RULE 7.7.4.

7.7.2 The ~~designated election official~~ COUNTY CLERK must use the letter and form prescribed by the Secretary of State and keep a copy as part of the official election record.

7.7.3 Nothing in this Rule prohibits the ~~designated election official~~ COUNTY CLERK from calling the elector, but a phone call may not substitute for written contact. If the ~~designated election official~~ COUNTY CLERK calls any elector he or she must ATTEMPT TO call all electors whose affidavits are unsigned.

7.7.4 IF AN ELECTOR FAILS TO CURE A MISSING SIGNATURE, THE COUNTY CLERK NEED NOT SEND A COPY OF THE MAIL BALLOT RETURN ENVELOPE TO THE DISTRICT ATTORNEY FOR INVESTIGATION.

[Sections 1-7.5-107.3 and 1-8.5-105(3)(a), C.R.S.]

~~7.7.2 The letter must inform the elector that the elector must sign the affidavit and return the form in person or by mail, fax, or email, and that the county must receive the form no later than eight calendar days after the election.~~

~~7.7.3 The election official must use the letter and the signature verification form approved by the Secretary of State. The letter and missing signature affidavit form does not violate section 1-13-801, C.R.S.~~

Amendments to Rule 7.9.3:

7.9.3 ~~Voter check-in at the voter service and polling center~~

~~(a) Each voter service and polling center must include an adequately staffed designated voter check-in table or area.~~

~~(b) The check-in judge must verify each elector's registration information, including address.~~

~~(c) If an elector has moved or is not registered, the check-in judge must direct the elector to the registration area. If the elector is registered and has no updates, the check-in judge must direct the elector to the voting table.~~ IN ORDER TO ASSIST APPLICANTS AND ELECTORS EFFICIENTLY, A COUNTY CLERK MUST CONFIGURE VOTER SERVICE AND POLLING CENTERS TO PROVIDE: SUFFICIENT ELECTION JUDGES, SCORE WORK STATIONS, VOTING EQUIPMENT, AND BALLOTS AND OTHER SUPPLIES.

Amendments to Rule 7.11:

7.11 Voter service and polling center connectivity

7.11.1 The county must have real-time access to SCORE AND WEBSCORE at every voter service and polling center designated by the county clerk.

7.11.2 THE COUNTY CLERK MUST INSTRUCT ELECTION JUDGES AND, IF APPROPRIATE, ELECTION STAFF, TO:

(A) USE WEBSCORE TO REGISTER VOTERS; UPDATE EXISTING VOTER REGISTRATIONS; ISSUE AND REPLACE MAIL BALLOTS; AND ISSUE, SPOIL, AND REPLACE IN-PERSON BALLOTS: AND

(B) OFFER AN IN-PERSON VOTER THE OPPORTUNITY TO OBTAIN A REPLACEMENT MAIL BALLOT RATHER THAN A PROVISIONAL BALLOT IN THE EVENT THE VOTER SERVICE AND POLLING CENTER LOSES CONNECTIVITY TO WEBSCORE BUT RETAINS CONNECTIVITY TO SCORE.

~~7.11.2~~ 7.11.3 At no time may an election official open SIMULTANEOUS SESSIONS OF both ~~the~~ SCORE ~~voter registration screen~~ and ~~the voting module~~ WEBSCORE on a single workstation.

~~7.11.3~~ 7.11.4 Every voter service and polling center designated by the county clerk must meet the minimum security procedures for transmitting voter registration data as outlined in section 1-5-102.9, C.R.S., and Rule 2.16.

Amendments to Rule 11.1.3 concerning voting system access:

11.1.3 In accordance with section 24-72-305.6, C.R.S., all permanent and temporary county staff and all vendor staff who have access to the voting system or any voting or counting equipment must pass ~~the~~ A criminal background check ~~described in Rule 6.5~~. A PERSON CONVICTED OF AN ELECTION OFFENSE OR AN OFFENSE CONTAINING AN ELEMENT OF FRAUD MAY NOT HAVE ACCESS TO A CODE, COMBINATION, PASSWORD, OR ENCRYPTION KEY FOR THE VOTING EQUIPMENT, BALLOT STORAGE AREA, COUNTING ROOM, OR TABULATION WORKSTATION.

Current Rule 16.1.5, concerning voting by military and overseas electors, is repealed and subsequent rules are renumbered as follows:

~~16.1.5 In accordance with sections 1-8.3-111 and 1-8.3-113, C.R.S., all ballots cast must be voted and mailed or electronically transmitted no later than 7:00 p.m. MT on election day, and received by the county clerk or the Secretary of State no later than the close of business on the eighth day after election day.~~

~~16.1.6~~ 16.1.5 Ballots received by the Secretary of State

[The remainder of New Rule 16.1.5, formerly Rule 16.1.6, is retained unaltered]

~~16.1.7~~ 16.1.6 The county clerk must send a minimum of one correspondence no later than 60 days before the Primary Election to each elector whose record is marked "Inactive." The correspondence may be sent by email or mail and, at a minimum, must notify the electors of:

[The remainder of New Rule 16.1.6, formerly Rule 16.1.7, is retained unaltered]

~~16.1.8~~ 16.1.7 No later than 45 days before an election, the county clerk must report to the Secretary of State the number ballots transmitted to military and overseas electors by the 45-day deadline.

~~16.1.9~~ 16.1.8 Failure to meet the 45-day ballot transmission deadline in section 1-8.3-110, C.R.S.

[The remainder of New Rule 16.1.8, formerly Rule 16.1.9, is retained unaltered]

Amendments to Rule 16.2.1(c), concerning electronic transmission for military and overseas

electors:

(c) In accordance with section 1-8.3-113(1), C.R.S., an elector who chooses to receive his or her unvoted ballot by ~~online ballot delivery~~ ELECTRONIC TRANSMISSION may return his or her ballot by fax or email ONLY IF THE ELECTOR DETERMINES THAT A MORE SECURE METHOD, SUCH AS RETURNING THE BALLOT BY MAIL, IS NOT AVAILABLE OR FEASIBLE. "NOT FEASIBLE" MEANS CIRCUMSTANCES WHERE THE ELECTOR BELIEVES THE TIMELY RETURN OF HIS OR HER BALLOT BY MAIL IS NOT CERTAIN.

Amendments to Rule 16.2.3:

16.2.3 The self-affirmation must include the standard oath required by the Uniformed and Overseas Citizen Voting Act (42 U.S.C sec. 1973ff(b)(7) and 1(a)(5)), the elector's name, date of birth, signature, and the following statement: I also understand that by returning my voted ballot by electronic transmission, I am voluntarily waiving my right to a secret ballot AND THAT COLORADO LAW REQUIRES THAT I RETURN THIS BALLOT BY A MORE SECURE METHOD, SUCH AS MAIL, IF AVAILABLE AND FEASIBLE. (~~Section~~ SECTIONS 1-8.3-113 AND 1-8.3-114, C.R.S.)

New Rule 16.2.8:

16.2.8 NOTHING IN THIS RULE 16.2 PERMITS INTERNET VOTING. INTERNET VOTING MEANS A SYSTEM THAT INCLUDES REMOTE ACCESS, A VOTE THAT IS CAST DIRECTLY INTO A CENTRAL VOTE SERVER THAT TALLIES THE VOTES, AND DOES NOT REQUIRE THE SUPERVISION OF ELECTION OFFICIALS.

Amendments to Rule 20.4:

20.4 Individuals with access to keys, door codes, and vault combinations

20.4.1 For employees with access to areas addressed in Rule 20.4.3, the county must state in the security plan each employee's title and the date of the criminal background check WAS performed ~~under Rule 6.5~~. [Section 24-72-305.6, C.R.S.]

[Current Rule 2.4.2 is retained unaltered]

20.4.3 Employee access. The county may grant employees access to the codes, combinations, passwords, and encryption keys described in this Rule in accordance with the following limitations:

(a) Access to the code, combination, password, or encryption key for the voting equipment, ballot storage areas, counting room, or tabulation workstations is restricted to employees who have successfully passed ~~the~~ A criminal background check ~~described in Rule 6.5~~. Any person who has been convicted of an election offense or an offense with an element of

fraud is prohibited from having access to a code, combination, password, or encryption key for the voting equipment, ballot storage areas, counting room, or tabulation workstations.

[Current Rules 20.4.3(b), 20.4.3(c), and Rule 20.4.5 are retained unaltered]

Amendments to Rule 20.9.1(c), concerning transportation of equipment, memory cards, ballot boxes, and ballots:

(c) Transportation by contract. If a county contracts for the delivery of equipment to remote voting locations, each individual delivering equipment must successfully pass ~~the~~ A criminal background check ~~described in Rule 6.5~~. Any person who has been convicted of an election offense or an offense with an element of fraud is prohibited from handling or delivering voting equipment. Two election officials must verify, sign, and date the chain-of-custody log upon release of the equipment to the individual(s) delivering the equipment.

New Rule 23:

RULE 23. COMMISSIONS

23.1 BIPARTISAN ELECTION ADVISORY COMMISSION

23.1.1 THE SECRETARY OF STATE FINDS AND DECLARES THAT OPEN DISCUSSION ABOUT THE ADMINISTRATION AND CONDUCT OF ELECTIONS IN COLORADO IS NECESSARY TO ENSURE THAT EVERY ELIGIBLE CITIZEN HAS THE OPPORTUNITY TO PARTICIPATE IN FAIR, ACCESSIBLE, AND IMPARTIAL ELECTIONS, AND HAS THE ASSURANCE THAT ELECTIONS ARE CONDUCTED WITH INTEGRITY AND HIS OR HER VOTE WILL COUNT. BECAUSE THE COLORADO GENERAL ASSEMBLY DISCONTINUED THE COLORADO VOTER ACCESS AND MODERNIZED ELECTION COMMISSION, THE SECRETARY OF STATE WILL ESTABLISH A BIPARTISAN ELECTION ADVISORY COMMISSION (THE COMMISSION) TO IDENTIFY PROCESSES FOR IMPROVEMENT AND WORK TO OBTAIN BIPARTISAN SUPPORT IN THE ADMINISTRATION OF ELECTIONS. THE COMMISSION WILL MAKE RECOMMENDATIONS TO THE SECRETARY OF STATE REGARDING THE DEVELOPMENT AND IMPLEMENTATION OF BEST PRACTICES, ADMINISTRATIVE RULES AND SUGGESTIONS FOR LEGISLATION.

23.1.2 MEMBERSHIP OF THE COMMISSION

(A) THE SECRETARY OF STATE WILL APPOINT AT LEAST 13 MEMBERS TO THE COMMISSION. THE COMMISSION MAY INCLUDE:

(1) A REPRESENTATIVE OF AN ORGANIZATION THAT ADVOCATES ON BEHALF OF PEOPLE WITH DISABILITIES;

(2) A MEMBER OF THE EXECUTIVE BRANCH AND AT LEAST ONE LEGISLATOR

FROM EACH PARTY;

(3) TWO COUNTY CLERK AND RECORDERS REPRESENTING THE COLORADO COUNTY CLERKS ASSOCIATION PRESIDENTIAL LINE OF LEADERSHIP;

(4) IF BOTH CLERKS IN (3) ARE FROM THE SAME PARTY OR IF NOT ALL COUNTIES ARE MEMBERS OF THE CCCA, ADDITIONAL CLERKS MAY BE APPOINTED;

(5) TWO REPRESENTATIVES OF ORGANIZATIONS THAT ADVOCATE ON BEHALF OF LOCAL GOVERNMENTS, INCLUDING COUNTIES, MUNICIPALITIES, AND SPECIAL DISTRICTS;

(6) CHAIR, PARTY OFFICER, OR LEGAL COUNSEL FOR EACH MAJOR POLITICAL PARTY; AND

(7) TWO MEMBERS WITH EXPERTISE ON VOTING RIGHTS AND/OR ELECTION INTEGRITY.

(B) THE SECRETARY OF STATE OR HIS OR HER DESIGNEE, WILL BE A MEMBER AND SERVE AS CHAIR OF THE COMMISSION.

(C) THE SECRETARY OF STATE'S OFFICE WILL PROVIDE STAFF SUPPORT TO THE COMMISSION AS MAY BE DIRECTED BY THE SECRETARY OF STATE.

23.1.3 MEETINGS

(A) THE COMMISSION MUST MEET NO FEWER THAN THREE TIMES ANNUALLY.

(B) THE MEETINGS WILL BE HELD AT THE OFFICE OF THE SECRETARY OF STATE OR REGIONAL LOCATIONS THROUGHOUT THE STATE AS THE COMMISSION DETERMINES APPROPRIATE.

(C) MEETINGS MUST COMPLY WITH COLORADO OPEN MEETINGS LAW AND WILL PERMIT AN OPPORTUNITY FOR PUBLIC COMMENT.

(D) NOTICES, RECORDS OF MEETINGS, WRITTEN COMMENTS, AND DOCUMENTS SUBMITTED TO THE COMMISSION WILL BE PUBLISHED ON THE OFFICIAL WEBSITE OF THE SECRETARY OF STATE. DOCUMENTS THAT ARE OTHERWISE PUBLICLY AVAILABLE NEED NOT BE POSTED. ANY SUBMISSION CONTAINING INFLAMMATORY OR OTHERWISE INAPPROPRIATE CONTENT WILL NOT BE POSTED, INCLUDING ANY MATERIAL THAT IS DEFAMATORY, IRRELEVANT, DUPLICATIVE, OR OBSCENE.

STATE OF COLORADO
Department of State
1700 Broadway
Suite 200
Denver, CO 80290

Wayne W. Williams
Secretary of State

Suzanne Staiert
Deputy Secretary of State

Notice of Proposed Rulemaking

Office of the Secretary of State
Election Rules
8 CCR 1505-1

May 28, 2015

I. Hearing Notice

As required by the State Administrative Procedure Act,[1] the Secretary of State gives notice of proposed rulemaking. The hearing is scheduled for **July 7, 2015 from 2:00 p.m. - 4:00 p.m.** in the Aspen Conference Room on the 3rd floor of the Secretary of State's Office at 1700 Broadway, Denver, Colorado 80290.

II. Subject

The Secretary is considering amendments to the election rules[2] to improve the administration and enforcement of Colorado election law.[3]

Specifically, the Secretary is considering rule revisions necessary to implement legislation, clarify and simplify the rules, remove language duplicative of statute, and ensure consistency with Department rulemaking standards. The Secretary may consider additional rule amendments.

A detailed Statement of Basis, Purpose, and Specific Statutory Authority follows this notice and is incorporated by reference.

III. Statutory authority

The Secretary proposes the rule revisions and amendments in accordance with the following statutory provisions:

[1] Section 24-4-103(3)(a), C.R.S. (2014).
[2] 8 CCR 1505-CCR 1.
[3] Article VII of the Colorado Constitution, Title 1 of the Colorado Revised Statutes, and the Help America Vote Act of 2002 ("HAVA"), P.L. No. 107-252.

- Section 1-1-107(2)(a), C.R.S., (2014), which authorizes the Secretary of State "[t]o promulgate, publish and distribute…such rules as the secretary finds necessary for the proper administration and enforcement of the election laws."

- Section 1-1.5-104(1)(b), C.R.S., (2014), which authorizes the Secretary of State to "[p]romulgate, oversee, and implement changes in the statewide voter registration system as specified in part 3 of article 2 of this title."

- Section 1-1.5-104(1)(e), C.R.S., (2014), which authorizes the Secretary of State to "[p]romulgate rules in accordance with article 4 of title 24, C.R.S., as the secretary finds necessary for proper administration and implementation of [the "Help America Vote Act of 2002", 42 U.S.C. §§ 15301-15545] of [Article 1.5 of Title 1]."

- Section 1-2-217.7(7), C.R.S., (2014), which states that "[t]he secretary of state shall promulgate rules in accordance with article 4 of title 24, C.R.S., as may be necessary to implement this section" concerning registration on or immediately before election day.

- Section 1-5-504.5(1)(e), C.R.S., (2014) which authorizes the Secretary of State to promulgate rules to prescribe the form of "explanation of the procedures that govern the provision of voting assistance to electors with disabilities who require such assistance pursuant to section 1-7-111, C.R.S.

- Section 1-7.5-104, C.R.S. (2014), which requires the county clerk and recorder to conduct a mail ballot election "under the supervision of, and subject to rules promulgated in accordance with article 4 of title 24, C.R.S., by, the secretary of state."

- Section 1-7.5-106, C.R.S., (2014), which requires the Secretary of State to establish procedures for and supervise the conduct of mail ballot elections, including adopting "rules governing procedures and forms necessary to implement [Article 7.5 of Title 1, C.R.S.]."

- Section 1-8.3-105(2), C.R.S., (2014), which authorizes the Secretary of State to prescribe by rule "special procedures or requirements as may be necessary to facilitate early voting by those members of the military or military support personnel directly affected by the emergency."

- Section 1-8.5-112, C.R.S., (2014), which requires the Secretary of State to promulgate all appropriate rules…for the purpose of ensuring the uniform application of [Article 8.5 of Title 1, C.R.S.]."

IV. Copies of draft rules

A preliminary draft of the proposed rules is posted on the Secretary of State's rules and notices of rulemaking website at:
www.sos.state.co.us/pubs/rule_making/hearings/2015/ElectionsRulesHearing20150707.html.

You may also contact our office to request a paper or editable electronic copy of the draft rules.

As required by the State Administrative Procedures Act,[4] if changes are made before the hearing, revised proposed draft rules will be available to the public and posted on the website by July 2, 2015.

V. Opportunity to testify and submit written comments

The Secretary values your feedback in our rulemaking process and we would very much like to hear your thoughts on the proposed amendments. Please review and consider the attached proposed draft rules.

Everyone will have the opportunity to testify and provide written comment concerning the rule amendments. To ensure that the hearing is prompt and efficient, oral testimony may be time-limited.

You may submit written comments by mail, email, or in person to our office any time before the hearing. If you attend the hearing, you may submit written comments to the hearing panel as well. Additional opportunity to comment in writing may be announced at the conclusion of the hearing.

All written comments will be posted online at the Secretary of State website www.sos.state.co.us/pubs/rule_making/hearings/2015/ElectionsRulesHearing20150707.html. We will redact contact information, including home address, email address, and telephone number(s), from submissions before posting the information online, unless otherwise directed by the contributor.

VI. Broadcast and audio recording of hearing

If you are unable to attend the hearing, you may listen to the live broadcast from the Aspen Conference Room online at www.sos.state.co.us/pubs/info_center/audioBroadcasts.html. After the hearing, visit the same website and click on "archived recordings" to access an audio recording of the hearing.

VII. Office contact

If you have any questions or would like to submit written comments, please contact Andrea Gyger with the Administration Division at SoS.Rulemaking@sos.state.co.us or (303) 894-2200 ext. 6329.

[4] Section 24-4-103(3)(a), C.R.S. (2014). "Any proposed rule or revised proposed rule by an agency which is to be considered at the public hearing…shall be made available to any person at least five days prior to said hearing."

Dated this 28th Day of May, 2015.

Wayne W. Williams
Colorado Secretary of State

STATE OF COLORADO
Department of State
1700 Broadway
Suite 200
Denver, CO 80290

Wayne Williams
Secretary of State

Suzanne Staiert
Deputy Secretary of State

Draft Statement of Basis, Purpose, and Specific Statutory Authority

Office of the Secretary of State
Election Rules
8 CCR 1505-1

May 28, 2015

I. Basis and Purpose

This statement explains proposed amendments to the Colorado Secretary of State Election Rules. The Secretary is considering other amendments to ensure uniform and proper administration, implementation, and enforcement of Federal and Colorado election laws,[1] improve elections administration in Colorado, and increase the transparency and security of the election process.

On May 8, 2015, the Secretary issued a request for public comment to help our office develop preliminary draft rules. The comments we received in anticipation of rulemaking are available online at: http://www.sos.state.co.us/pubs/rule_making/ruleComments.html and are incorporated into the official rulemaking record.

Specific proposed changes include:

- Amendments to Rule 1.1.46 to clarify how watchers are appointed for a recall election.
- Amendments to Rule 2.3 to clarify that a county must mark an elector's registration record as "ID Required" if the elector provides a driver's license or state identification card number or social security number that does not verify in the statewide voter registration database.
- New Rule 2.3.1 requires a county to process the Help American Vote Verification file on a monthly basis and remove the "ID Required" flag for those numbers that are verified.
- Amendments to Rule 2.4 to clarify that the provisions of Rule 2.4 apply to new registration applications.

[1] Article VII of the Colorado Constitution, Title 1 of the Colorado Revised Statutes, and the Help America Vote Act of 2002 ("HAVA"), P.L. No. 107-252.

- Amendments to Rule 2.5 to clarify that those rule provisions apply to existing voter registration records. The amendments also establish that an application must meet minimum matching criteria before a county may change an elector's status.

- Amendments to Rule 2.10.4 clarify that if a new voter notification card is returned to the county clerk as undeliverable after the 20-day period outlined in section 1-2-509(3), C.R.S., expires, the county clerk must mark the voter's record as "Inactive – returned mail" and mail a confirmation card.

- Amendments to Rule 2.13.1(a) clarify that election judges are permitted to register voters or update voter registration information in SCORE.

- Repeal of Rule 2.13.1(b) to correspond with Senate Bill 15-100.

- Amendments to New Rule 2.13.1(b) allow a county to provide its own training to election judges instead of the Secretary of State provided training if the training is approved by the Secretary of State. .

- New Rule 4.3.3 clarifies canvass board appointments in odd-year November elections in which there is a statewide issue on the ballot.

- Repeal of Rule 6.4.1 and 6.5 to correspond with Senate Bill 15-100.

- Repeal of 7.2.3(c) because it is addressed by section 1-7.5-107(3)(a)(I), C.R.S.

- Repeal of 7.2.6 to correspond with Senate Bill 15-100.

- New Rule 7.2.6, which provides that each mail ballot return envelope must include a section for the elector to identify the person returning a ballot other than the voter. This rule is intended to assist with the enforcement of the ten-ballot receipt-for-delivery requirement in statute and to provide a chain-of-custody in instances of alleged ballot tampering.

- New Rule 7.2.7 clarifies that a county must issue a mail ballot to any eligible elector who requests one in person at the county clerk's office beginning 32 days before an election in accordance with section 1-7.5-107(2.7), C.R.S.

- Amendments to Rule 7.3.1 clarify that a designated election official must attempt to call all electors whose missing signature affidavits are unsigned if the designated election official calls any elector.

- Amendments to Rule 7.5.1 requires counties to adequately light all drop-off locations and clarifies that a county must monitor each drop-off location using either an election official or video security surveillance recording system as defined in Rule 1.1.42.

- Amendments to Rule 7.5.5 clarify that election officials must receive undeliverable ballots in SCORE upon receipt.

- Amendments to Rule 7.7.1 require election officials to follow the procedures for discrepant signatures outlined in section 1-7.5-107.3(2)(a), C.R.S., if a ballot return envelope lacks a signature.

- New Rule 7.1.4 clarifies that if an elector fails to cure a missing signature, the county clerk is not required to send a copy of the ballot return envelope to the district attorney.

- Repeal of Rules 7.7.2 and 7.7.3 as unnecessary with amendments to Rule 7.7.1

- Amendments to Rule 7.9.3 provide that a county clerk must configure voter service and polling centers, and provide sufficient resources to assist registrants and electors efficiently.

- New Rule 7.11.2 requires a county to use the WebSCORE application to register voters; update existing voter registrations; issue and replace mail ballots; and issue, spoil, and replace in-person ballots. It also requires that in the event that the voter service and polling center loses connectivity to WebSCORE but retains connectivity to SCORE, the county must offer an in-person voter the option to obtain a replacement mail ballot rather than a provisional ballot.

- Amendments to Rule 7.11.3 provide that an election official may not open simultaneous sessions of both SCORE and WebSCORE on a single workstation.

- Amendments to Rule 11.1.3 explaining that a person convicted of an election offense containing an element of fraud may not have access to a code, combination, password, or encryption key for the voting equipment, ballot storage area, counting room, or tabulation workstation.

- Repeal of Rule 16.1.5 as duplicative of sections 1-8.3-111 and 1-8.3-113, C.R.S.

- Amendments to Rule 16.2.1(c) to correspond with section 1-8.3-111, C.R.S., and define "not feasible" as circumstances where the elector believes the timely return of his or her ballot by mail is not certain.

- Amendments to Rule 16.2.3 to amend the affirmation to indicate the elector's understanding that Colorado law requires an elector to return his or her ballot by a more secure method, such as mail, if available and feasible.

- New Rule 16.2.8 prohibits and defines internet voting.

- Amendments to Rule 20.4.1 and 20.4.3 to correspond to Senate Bill 15-100.

- Amendments to Rule 20.9.1(c) to correspond to Senate Bill 15-100.

- New Rule 23 to create a Bipartisan Election Advisory Commission. This Rule outlines the purpose of the Commission, the membership of the Commission, and the structure of the meetings.

Other changes to rules not specifically listed are non-substantive and necessary for consistency with Department rulemaking format and style. Cross-references in rules are also corrected or updated.

II. Rulemaking Authority

The statutory and constitutional authority is as follows:

1. Section 1-1-107(2)(a), C.R.S., (2014), which authorizes the Secretary of State "[t]o promulgate, publish and distribute…such rules as the secretary finds necessary for the proper administration and enforcement of the election laws."

2. Section 1-1.5-104(1)(b), C.R.S., (2014), which authorizes the Secretary of State to "[p]romulgate, oversee, and implement changes in the statewide voter registration system as specified in part 3 of article 2 of this title."

3. Section 1-1.5-104(1)(e), C.R.S., (2014), which authorizes the Secretary of State to "[p]romulgate rules in accordance with article 4 of title 24, C.R.S., as the secretary finds necessary for proper administration and implementation of [the "Help America Vote Act of 2002", 42 U.S.C. §§ 15301-15545] of [Article 1.5 of Title 1]."

4. Section 1-2-217.7(7), C.R.S., (2014), which states that "[t]he secretary of state shall promulgate rules in accordance with article 4 of title 24, C.R.S., as may be necessary to implement this section" concerning registration on or immediately before election day.

5. Section 1-5-504.5(1)(e), C.R.S., (2014) which authorizes the Secretary of State to promulgate rules to prescribe the form of "explanation of the procedures that govern the provision of voting assistance to electors with disabilities who require such assistance pursuant to section 1-7-111, C.R.S.

6. Section 1-7.5-104, C.R.S. (2014), which requires the county clerk and recorder to conduct a mail ballot election "under the supervision of, and subject to rules promulgated in accordance with article 4 of title 24, C.R.S., by, the secretary of state."

7. Section 1-7.5-106, C.R.S., (2014), which requires the Secretary of State to establish procedures for and supervise the conduct of mail ballot elections, including adopting "rules governing procedures and forms necessary to implement [Article 7.5 of Title 1, C.R.S.]."

8. Section 1-8.3-105(2), C.R.S., (2014), which authorizes the Secretary of State to prescribe by rule "special procedures or requirements as may be necessary to facilitate early voting by those members of the military or military support personnel directly affected by the emergency."

9. Section 1-8.5-112, C.R.S., (2014), which requires the Secretary of State to promulgate all appropriate rules…for the purpose of ensuring the uniform application of [Article 8.5 of Title 1, C.R.S.]."

Working Draft of Proposed Rules

Office of the Colorado Secretary of State
Election Rules
8 CCR 1505-1

May 28, 2015

Disclaimer:
In accordance with the State Administrative Procedure Act, this draft is filed with the Secretary of State and submitted to the Department of Regulatory Agencies.[1]

This is a preliminary draft of the proposed rules that may be revised before the July 7, 2015 rulemaking hearing. If changes are made, a revised copy of the proposed rules will be available to the public and a copy will be posted on the Department of State's website no later than **July 2, 2015**.[2]

Please note the following formatting key:

Font effect	Meaning
Sentence case	Retained/modified current rule language
SMALL CAPS	New language
~~Strikethrough~~	Deletions
Italic blue font text	Annotations

Amendments to 8 CCR 1505-1 follow:

Amendments to Rule 1.1.46(a):

1.1.46 "Watcher" has the same meaning as in section 1-1-104(51), C.R.S.

(a) ~~A watcher may be appointed for a recall election in the same manner as in a primary election.~~ WATCHERS MAY BE APPOINTED FOR A RECALL ELECTION BY EACH QUALIFIED SUCCESSOR CANDIDATE, THE PROPONENTS AND OPPONENTS OF THE RECALL BALLOT ISSUE, AND EACH PARTICIPATING POLITICAL PARTY FOR A PARTISAN RECALL ELECTION.

[The remainder of Rule 1.1.46 is retained unaltered]

Amendments to Rule 2.3 through 2.5:

2.3 ~~When an elector registers to vote, the elector must provide a verifiable driver's license or state identification card number, or last four digits of his or her social security number.~~ IF AN ELECTOR HAS A DRIVER'S LICENSE NUMBER OR STATE IDENTIFICATION NUMBER, HE OR

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[1] Sections 24-4-103(2.5) and (3)(a), C.R.S. (2014). A draft must be submitted to the Department at the time that a notice of proposed rulemaking is filed with the Secretary of State.
[2] Section 24-4-103(4)(a), C.R.S. (2014). "[A]ny proposed rule or revised proposed rule by an agency which is to be considered at the public hearing…shall be made available to any person at least five days prior to said hearing."

SHE MUST PROVIDE IT WHEN REGISTERING TO VOTE. IF THE ELECTOR HAS NEITHER, HE OR SHE MAY PROVIDE THE LAST FOUR DIGITS OF HIS OR HER SOCIAL SECURITY NUMBER. If the elector states that he or she does not have a driver's license, state identification card number, or social security number, OR IF THE CLERK CANNOT VERIFY THE ELECTOR'S INFORMATION IN SCORE, the county clerk must register the elector and mark the registration record "ID required".

2.3.1 THE COUNTY MUST PROCESS THE HELP AMERICA VOTE VERIFICATION FILE ON A MONTHLY BASIS BY VERIFYING SOCIAL SECURITY NUMBERS AND REMOVE THE "ID REQUIRED" VERIFIED RECORDS.

~~2.3.1~~ 2.3.2 As used in section 1-1-104(19.5), C.R.S., government document means a document issued by a city, county, state, or federal government.

[The remainder of New Rule 2.3.2, formerly Rule 2.3.1, is retained unaltered]

~~2.3.2~~ 2.3.3 As used in section 1-1-104(19.5)(a)(VII), C.R.S., "current" means that the date of the document is within 60 days of the date submitted for identification purposes unless the document states a longer billing cycle.

~~2.3.3~~ 2.3.4 Documents issued under section 42-2-505, C.R.S., are not acceptable forms of identification for any purpose under the Uniform Election Code of 1992 and these rules.

2.4 Treatment of INCOMPLETE NEW REGISTRATION applications ~~where the elector fails to provide required information~~

[The remainder of Rule 2.4 is retained unaltered]

2.5 Changes to an elector's EXISTING voter registration record

2.5.1 If an elector submits a change to his or her voter registration record and fails to include the information required by sections 1-2-216 or 1-2-219, C.R.S., the county clerk ~~must~~ MAY not make the requested change unless the county clerk can ~~confidently identify the voter~~ ESTABLISH MINIMUM MATCHING CRITERIA. ~~The~~ IF THE county clerk CANNOT ESTABLISH MINIMUM MATCHING CRITERIA, THE COUNTY CLERK MAY NOT CHANGE THE ELECTOR'S STATUS AND must notify the ~~voter~~ ELECTOR of the additional information that is required to process the request.

[The remainder of Rule 2.5 is retained unaltered]

Amendments to Rule 2.7.1:

2.7 Minimum matching criteria

2.7.1 Except as provided in section 1-2-302.5, C.R.S., the county clerk ~~must~~ MAY not transfer, consolidate, or cancel a voter registration record unless the APPLICABLE minimum matching criteria as set forth in sections 1-2-603 ~~and~~ OR 1-2-604,

C.R.S., are met. If the minimum matching criteria are not met the county clerk must send a letter to the voter requesting confirmation of the missing or non-matching information in order to transfer, consolidate, or cancel the record.

[The remainder of Rule 2.7 is retained unaltered]

Amendments to Rule 2.10:

2.10 ~~20-day applicants~~ NEW VOTER NOTIFICATION under section 1-2-509(3), C.R.S.

2.10.1 When a county clerk ~~deems~~ DETERMINES an applicant "not registered" upon receipt of an undeliverable new voter notification in accordance with section 1-2-509(3), C.R.S., the county clerk must mail a confirmation card. The confirmation card must meet the requirements of section 1-1-104(2.8), C.R.S.

2.10.2 If the applicant returns the signed confirmation card within 90 days the county clerk must register the applicant using the date of the original application.

2.10.3 During the 22 days before an election, the county clerk must defer processing undeliverable ~~20-day~~ NEW VOTER notifications. After the election is closed, the clerk must ~~deem~~ DETERMINE an applicant "not registered" under section 1-2-509(3), C.R.S., only if the applicant did not vote in the election.

~~2.12.1~~ 2.10.4 ~~When~~ IF AFTER THE 20-DAY PERIOD OUTLINED IN SECTION 1-2-509(3), C.R.S, the United States Postal Service returns a new voter notification ~~or confirmation card~~ to the county clerk as undeliverable, or provides the clerk with a postcard notice of mail forwarding, the county clerk must mark the voter's record "Inactive ~~– returned mail~~" and mail a confirmation card. ~~Where a confirmation card sent under this Rule is returned as undeliverable, the county is not required to mail another card.~~

[Current Rule 2.12.1 is amended and recodified as New Rule 2.10.4]

Amendments to Rules 2.12 and 2.13:

2.12 List Maintenance under section 8 of the National Voter Registration Act of 1993

~~2.12.1 When the United States Postal Service returns a new voter notification or confirmation card to the county clerk as undeliverable, or provides the clerk with a postcard notice of mail forwarding, the county clerk must mark the voter's record "Inactive – returned mail" and mail a confirmation card. Where a confirmation card sent under this Rule is returned as undeliverable, the county is not required to mail another card.~~

[Current Rule 2.12.1 is amended and recodified as New Rule 2.10.4; subsequent rules are renumbered as follows:]

~~2.12.2~~ 2.12.1 The Secretary of State will provide monthly National Change of Address (NCOA) data under section 1-2-302.5, C.R.S., to the county clerk by the fifth of each month.

[The remainder of New Rule 2.12.1, formerly Rule 2.12.2, is retained unaltered]

~~2.12.3~~ 2.12.2 In accordance with section 1-2-605(7), C.R.S., no later than 90 days following a General Election, the county clerk in each county must cancel the registrations of electors:

[The remainder of New Rule 2.12.2, formerly Rule 2.12.3, is retained unaltered]

~~2.12.4~~ 2.12.3 The county must process all records designated for cancelation by the Secretary of State within 21 days of receipt.

~~2.12.5~~ 2.12.4 The county must process and mail all confirmation cards using SCORE so that the elector's voter registration record audit log shows the date on which the county printed or extracted the confirmation card.

~~2.12.6~~ 2.12.5 To the extent a county has records of confirmation cards it has generated and sent outside of SCORE, the county must retain those records as election records under section 1-7-802, C.R.S.

2.13 Voter registration at a voter service and polling center

2.13.1 A person registering voters or updating voter registration information in a voter service and polling center must:

(a) Be AN ELECTION JUDGE, a permanent or temporary county employee, state employee, or temporary staff hired by the county clerk;

~~(b) Successfully pass the criminal background check described in Rule 6.5;~~ and

~~(c)~~ (B) Complete a training course provided by OR APPROVED BY the Secretary of State.

[Current Rule 2.13.2 is retained unaltered]

New Rule 4.3.3:

4.3.3 IN ANY ODD-YEAR NOVEMBER COORDINATED ELECTION IN WHICH THERE IS A STATEWIDE ISSUE ON THE BALLOT, THE CANVASS BOARD MEMBERS MUST BE APPOINTED IN ACCORDANCE WITH SECTION 1-10-101, C.R.S.

Amendments to Rule 6.4 and repeal of Rule 6.5:

6.4 A supervisor judge in a voter service and polling center must~~:~~

~~6.4.1 Successfully pass the criminal background check described in Rule 6.5. Any person who has been convicted of an election offense or an offense with an element of fraud is prohibited from handling voter registration applications or conducting voter registration and list maintenance activities.~~

~~6.4.2 Complete~~ COMPLETE a training course ~~provided by~~ APPROVED BY the Secretary of State.

~~6.5 The county clerk must arrange for a criminal background check on a supervisor judge and each staff member conducting voter registration activities.~~

~~(a) The criminal background check must be conducted by or through the Colorado Bureau of Investigation, the county sheriff's department in accordance with section 24-72-305.6(3), C.R.S., or similar state or federal agency.~~

~~(b) A person convicted of an election offense or an offense containing an element of fraud may not:~~

~~(1) Handle voter registration applications or conduct voter registration and list maintenance activities; or~~

~~(2) Have access to a code, combination, password, or encryption key for the voting equipment, ballot storage area, counting room, or tabulation workstation.~~

Repeal of Rule 7.2.3(c) concerning ballots and ballot packets:

~~(c) In coordinated elections, the county clerk must mail ballots to all active eligible electors of each political subdivision.~~

Amendments to Rules 7.2.5 through 7.2.7:

7.2.5 ~~Effective January 1, 2015, each~~ EACH mail ballot return envelope and mail ballot instruction must include a statement informing voters that it is a violation of law to ~~drop off more than ten ballots~~ RECEIVE MORE THAN TEN BALLOTS FOR MAILING OR DELIVERY in any election.

~~7.2.6 Effective January 1, 2015, each mail ballot return envelope must include the following: "For third party delivery: I am voluntarily giving my ballot to (name and address) for delivery. I have marked and sealed my ballot in private and have not allowed any person to observe the marking of the ballot, except for those authorized to assist voters under state or federal law.~~"

7.2.6 EFFECTIVE JANUARY 1, 2016, EACH MAIL BALLOT RETURN ENVELOPE MUST INCLUDE THE FOLLOWING: "I AM VOLUNTARILY GIVING MY BALLOT TO (NAME AND ADDRESS) FOR DELIVERY ON MY BEHALF."

7.2.7 A COUNTY MUST ISSUE A MAIL BALLOT TO ANY ELIGIBLE ELECTOR WHO REQUESTS ONE IN PERSON AT THE COUNTY CLERK'S OFFICE BEGINNING 32 DAYS BEFORE AN ELECTION. [SECTION 1-7.5-107(2.7), C.R.S.]

Amendments to Rule 7.5.1:

7.5 Receipt and processing of ballots

7.5.1 ~~All~~ THE COUNTY CLERK MUST ADEQUATELY LIGHT ALL STAND-ALONE drop-off locations ~~must be monitored by~~ AND USE EITHER an election official or A video security surveillance recording system~~,~~ as defined in Rule ~~20~~ 1.1.42 TO MONITOR EACH LOCATION.

[The remainder of Rule 7.5.1 and Rules 7.5.2 through 7.5.4 are retained unaltered]

Amendments to Rule 7.5.5:

7.5.5 Election officials must record the number of ballot packets returned as undeliverable AND RECEIVE THE BALLOT PACKETS IN SCORE upon receipt.

Amendments to Rule 7.7:

7.7 Missing signature.

7.7.1 If a mail or provisional ballot return envelope lacks a signature, ~~the election official must contact the elector in writing no later than two calendar days after election day.~~ THE COUNTY CLERK MUST FOLLOW THE PROCEDURES FOR DISCREPANT SIGNATURES OUTLINED IN SECTION 1-7.5-107.3(2)(A), C.R.S., EXCEPT AS PROVIDED IN RULE 7.7.4.

7.7.2 The ~~designated election official~~ COUNTY CLERK must use the letter and form prescribed by the Secretary of State and keep a copy as part of the official election record.

7.7.3 Nothing in this Rule prohibits the ~~designated election official~~ COUNTY CLERK from calling the elector, but a phone call may not substitute for written contact. If the ~~designated election official~~ COUNTY CLERK calls any elector he or she must ATTEMPT TO call all electors whose affidavits are unsigned.

7.7.4 IF AN ELECTOR FAILS TO CURE A MISSING SIGNATURE, THE COUNTY CLERK NEED NOT SEND A COPY OF THE MAIL BALLOT RETURN ENVELOPE TO THE DISTRICT ATTORNEY FOR INVESTIGATION.

[Sections 1-7.5-107.3 and 1-8.5-105(3)(a), C.R.S.]

~~7.7.2 The letter must inform the elector that the elector must sign the affidavit and return the form in person or by mail, fax, or email, and that the county must receive the form no later than eight calendar days after the election.~~

~~7.7.3 The election official must use the letter and the signature verification form approved by the Secretary of State. The letter and missing signature affidavit form does not violate section 1-13-801, C.R.S.~~

Amendments to Rule 7.9.3:

7.9.3 ~~Voter check-in at the voter service and polling center~~

~~(a) Each voter service and polling center must include an adequately staffed designated voter check-in table or area.~~

~~(b) The check-in judge must verify each elector's registration information, including address.~~

~~(c) If an elector has moved or is not registered, the check-in judge must direct the elector to the registration area. If the elector is registered and has no updates, the check-in judge must direct the elector to the voting table.~~ IN ORDER TO ASSIST APPLICANTS AND ELECTORS EFFICIENTLY, A COUNTY CLERK MUST CONFIGURE VOTER SERVICE AND POLLING CENTERS TO PROVIDE: SUFFICIENT ELECTION JUDGES, SCORE WORK STATIONS, VOTING EQUIPMENT, AND BALLOTS AND OTHER SUPPLIES.

Amendments to Rule 7.11:

7.11 Voter service and polling center connectivity

7.11.1 The county must have real-time access to SCORE AND WEBSCORE at every voter service and polling center designated by the county clerk.

7.11.2 THE COUNTY CLERK MUST INSTRUCT ELECTION JUDGES AND, IF APPROPRIATE, ELECTION STAFF, TO:

(A) USE WEBSCORE TO REGISTER VOTERS; UPDATE EXISTING VOTER REGISTRATIONS; ISSUE AND REPLACE MAIL BALLOTS; AND ISSUE, SPOIL, AND REPLACE IN-PERSON BALLOTS: AND

(B) OFFER AN IN-PERSON VOTER THE OPPORTUNITY TO OBTAIN A REPLACEMENT MAIL BALLOT RATHER THAN A PROVISIONAL BALLOT IN THE EVENT THE VOTER SERVICE AND POLLING CENTER LOSES CONNECTIVITY TO WEBSCORE BUT RETAINS CONNECTIVITY TO SCORE.

~~7.11.2~~ 7.11.3 At no time may an election official open SIMULTANEOUS SESSIONS OF both ~~the~~ SCORE ~~voter registration screen~~ and ~~the voting module~~ WEBSCORE on a single workstation.

~~7.11.3~~ 7.11.4 Every voter service and polling center designated by the county clerk must meet the minimum security procedures for transmitting voter registration data as outlined in section 1-5-102.9, C.R.S., and Rule 2.16.

Amendments to Rule 11.1.3 concerning voting system access:

11.1.3 In accordance with section 24-72-305.6, C.R.S., all permanent and temporary county staff and all vendor staff who have access to the voting system or any voting or counting equipment must pass ~~the~~ A criminal background check ~~described in Rule 6.5~~. A PERSON CONVICTED OF AN ELECTION OFFENSE OR AN OFFENSE CONTAINING AN ELEMENT OF FRAUD MAY NOT HAVE ACCESS TO A CODE, COMBINATION, PASSWORD, OR ENCRYPTION KEY FOR THE VOTING EQUIPMENT, BALLOT STORAGE AREA, COUNTING ROOM, OR TABULATION WORKSTATION.

Current Rule 16.1.5, concerning voting by military and overseas electors, is repealed and subsequent rules are renumbered as follows:

~~16.1.5 In accordance with sections 1-8.3-111 and 1-8.3-113, C.R.S., all ballots cast must be voted and mailed or electronically transmitted no later than 7:00 p.m. MT on election day, and received by the county clerk or the Secretary of State no later than the close of business on the eighth day after election day.~~

~~16.1.6~~ 16.1.5 Ballots received by the Secretary of State

[The remainder of New Rule 16.1.5, formerly Rule 16.1.6, is retained unaltered]

~~16.1.7~~ 16.1.6 The county clerk must send a minimum of one correspondence no later than 60 days before the Primary Election to each elector whose record is marked "Inactive." The correspondence may be sent by email or mail and, at a minimum, must notify the electors of:

[The remainder of New Rule 16.1.6, formerly Rule 16.1.7, is retained unaltered]

~~16.1.8~~ 16.1.7 No later than 45 days before an election, the county clerk must report to the Secretary of State the number ballots transmitted to military and overseas electors by the 45-day deadline.

~~16.1.9~~ 16.1.8 Failure to meet the 45-day ballot transmission deadline in section 1-8.3-110, C.R.S.

[The remainder of New Rule 16.1.8, formerly Rule 16.1.9, is retained unaltered]

Amendments to Rule 16.2.1(c), concerning electronic transmission for military and overseas electors:

(c) In accordance with section 1-8.3-113(1), C.R.S., an elector who chooses to receive his or her unvoted ballot by ~~online ballot delivery~~ ELECTRONIC TRANSMISSION may return his or her ballot by fax or email ONLY IF THE

ELECTOR DETERMINES THAT A MORE SECURE METHOD, SUCH AS RETURNING THE BALLOT BY MAIL, IS NOT AVAILABLE OR FEASIBLE. "NOT FEASIBLE" MEANS CIRCUMSTANCES WHERE THE ELECTOR BELIEVES THE TIMELY RETURN OF HIS OR HER BALLOT BY MAIL IS NOT CERTAIN.

Amendments to Rule 16.2.3:

16.2.3 The self-affirmation must include the standard oath required by the Uniformed and Overseas Citizen Voting Act (42 U.S.C sec. 1973ff(b)(7) and 1(a)(5)), the elector's name, date of birth, signature, and the following statement: I also understand that by returning my voted ballot by electronic transmission, I am voluntarily waiving my right to a secret ballot AND THAT COLORADO LAW REQUIRES THAT I RETURN THIS BALLOT BY A MORE SECURE METHOD, SUCH AS MAIL, IF AVAILABLE AND FEASIBLE. (~~Section~~ SECTIONS 1-8.3-113 AND 1-8.3-114, C.R.S.)

New Rule 16.2.8:

16.2.8 NOTHING IN THIS RULE 16.2 PERMITS INTERNET VOTING. INTERNET VOTING MEANS A SYSTEM THAT INCLUDES REMOTE ACCESS, A VOTE THAT IS CAST DIRECTLY INTO A CENTRAL VOTE SERVER THAT TALLIES THE VOTES, AND DOES NOT REQUIRE THE SUPERVISION OF ELECTION OFFICIALS.

Amendments to Rule 20.4:

20.4 Individuals with access to keys, door codes, and vault combinations

20.4.1 For employees with access to areas addressed in Rule 20.4.3, the county must state in the security plan each employee's title and the date of the criminal background check WAS performed ~~under Rule 6.5~~. [Section 24-72-305.6, C.R.S.]

[Current Rule 2.4.2 is retained unaltered]

20.4.3 Employee access. The county may grant employees access to the codes, combinations, passwords, and encryption keys described in this Rule in accordance with the following limitations:

(a) Access to the code, combination, password, or encryption key for the voting equipment, ballot storage areas, counting room, or tabulation workstations is restricted to employees who have successfully passed ~~the~~ A criminal background check ~~described in Rule 6.5~~. Any person who has been convicted of an election offense or an offense with an element of fraud is prohibited from having access to a code, combination, password, or encryption key for the voting equipment, ballot storage areas, counting room, or tabulation workstations.

[Current Rules 20.4.3(b), 20.4.3(c), and Rule 20.4.5 are retained unaltered]

Amendments to Rule 20.9.1(c), concerning transportation of equipment, memory cards, ballot boxes, and ballots:

(c) Transportation by contract. If a county contracts for the delivery of equipment to remote voting locations, each individual delivering equipment must successfully pass ~~the~~ A criminal background check ~~described in Rule 6.5~~. Any person who has been convicted of an election offense or an offense with an element of fraud is prohibited from handling or delivering voting equipment. Two election officials must verify, sign, and date the chain-of-custody log upon release of the equipment to the individual(s) delivering the equipment.

New Rule 23:

RULE 23. COMMISSIONS

23.1 BIPARTISAN ELECTION ADVISORY COMMISSION

23.1.1 THE SECRETARY OF STATE FINDS AND DECLARES THAT OPEN DISCUSSION ABOUT THE ADMINISTRATION AND CONDUCT OF ELECTIONS IN COLORADO IS NECESSARY TO ENSURE THAT EVERY ELIGIBLE CITIZEN HAS THE OPPORTUNITY TO PARTICIPATE IN FAIR, ACCESSIBLE, AND IMPARTIAL ELECTIONS, AND HAS THE ASSURANCE THAT ELECTIONS ARE CONDUCTED WITH INTEGRITY AND HIS OR HER VOTE WILL COUNT. BECAUSE THE COLORADO GENERAL ASSEMBLY DISCONTINUED THE COLORADO VOTER ACCESS AND MODERNIZED ELECTION COMMISSION, THE SECRETARY OF STATE WILL ESTABLISH A BIPARTISAN ELECTION ADVISORY COMMISSION (THE COMMISSION) TO IDENTIFY PROCESSES FOR IMPROVEMENT AND WORK TO OBTAIN BIPARTISAN SUPPORT IN THE ADMINISTRATION OF ELECTIONS. THE COMMISSION WILL MAKE RECOMMENDATIONS TO THE SECRETARY OF STATE REGARDING THE DEVELOPMENT AND IMPLEMENTATION OF BEST PRACTICES, ADMINISTRATIVE RULES AND SUGGESTIONS FOR LEGISLATION.

23.1.2 MEMBERSHIP OF THE COMMISSION

(A) THE SECRETARY OF STATE WILL APPOINT AT LEAST 13 MEMBERS TO THE COMMISSION. THE COMMISSION MAY INCLUDE:

(1) A REPRESENTATIVE OF AN ORGANIZATION THAT ADVOCATES ON BEHALF OF PEOPLE WITH DISABILITIES;

(2) A MEMBER OF THE EXECUTIVE BRANCH AND AT LEAST ONE LEGISLATOR FROM EACH PARTY;

(3) TWO COUNTY CLERK AND RECORDERS REPRESENTING THE COLORADO COUNTY CLERKS ASSOCIATION PRESIDENTIAL LINE OF LEADERSHIP;

(4) IF BOTH CLERKS IN (3) ARE FROM THE SAME PARTY OR IF NOT ALL COUNTIES ARE MEMBERS OF THE CCCA, ADDITIONAL CLERKS MAY BE APPOINTED;

(5) TWO REPRESENTATIVES OF ORGANIZATIONS THAT ADVOCATE ON BEHALF OF LOCAL GOVERNMENTS, INCLUDING COUNTIES, MUNICIPALITIES, AND SPECIAL DISTRICTS;

(6) CHAIR, PARTY OFFICER, OR LEGAL COUNSEL FOR EACH MAJOR POLITICAL PARTY; AND

(7) TWO MEMBERS WITH EXPERTISE ON VOTING RIGHTS AND/OR ELECTION INTEGRITY.

(B) THE SECRETARY OF STATE OR HIS OR HER DESIGNEE, WILL BE A MEMBER AND SERVE AS CHAIR OF THE COMMISSION.

(C) THE SECRETARY OF STATE'S OFFICE WILL PROVIDE STAFF SUPPORT TO THE COMMISSION AS MAY BE DIRECTED BY THE SECRETARY OF STATE.

23.1.3 MEETINGS

(A) THE COMMISSION MUST MEET NO FEWER THAN THREE TIMES ANNUALLY.

(B) THE MEETINGS WILL BE HELD AT THE OFFICE OF THE SECRETARY OF STATE OR REGIONAL LOCATIONS THROUGHOUT THE STATE AS THE COMMISSION DETERMINES APPROPRIATE.

(C) MEETINGS MUST COMPLY WITH COLORADO OPEN MEETINGS LAW AND WILL PERMIT AN OPPORTUNITY FOR PUBLIC COMMENT.

(D) NOTICES, RECORDS OF MEETINGS, WRITTEN COMMENTS, AND DOCUMENTS SUBMITTED TO THE COMMISSION WILL BE PUBLISHED ON THE OFFICIAL WEBSITE OF THE SECRETARY OF STATE. DOCUMENTS THAT ARE OTHERWISE PUBLICLY AVAILABLE NEED NOT BE POSTED. ANY SUBMISSION CONTAINING INFLAMMATORY OR OTHERWISE INAPPROPRIATE CONTENT WILL NOT BE POSTED, INCLUDING ANY MATERIAL THAT IS DEFAMATORY, IRRELEVANT, DUPLICATIVE, OR OBSCENE.

Notice of Proposed Rulemaking

Tracking number

2015-00312

Department

1507 - Department of Public Safety

Agency

1507 - Division of Fire Prevention and Control

CCR number

8 CCR 1507-11

Rule title

FIRE SUPPRESSION PROGRAM

Rulemaking Hearing

Date

07/08/2015

Time

01:00 PM

Location

690 Kipling St., Lakewood, CO 1st Floor Conference Room

Subjects and issues involved

Amending Fire Suppression Program Rules

Statutory authority

24-33.5-1204.5, C.R.S

Contact information

Name

Jake Miller

Title

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COLORADO FIRE SUPPRESSION RULES
~~2006~~ 2015 REVISION

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SECTION 1
INTRODUCTION AND BACKGROUND INFORMATION

The Colorado Fire Suppression System Program began on January 1, 1991. It was created by Senate Bill 90-4, which was signed into law on May 18, 1990. The purpose of the Colorado Fire Suppression Program is to ensure that life safety systems, installed in commercial and residential occupancies, are installed and maintained properly, according to nationally recognized standards. 24-33.5-1204.5, C.R.S. establishes the authority to promulgate rules and regulations to administer the fire suppression program and to establish fees and charges necessary to defray the anticipated costs of the program.

SECTION 2
DEFINITIONS

The definitions provided in 24-33.5-1202, C.R.S., shall apply to these rules and regulations. The following additional definitions shall also apply:

2.1 AUTHORITY HAVING JURISDICTION: - means the Division, unless delegated to a Local Authority Having Jurisdiction having fire suppression systems inspectors certified to the appropriate level.

2.2 CERTIFICATE OF REGISTRATION (OR REGISTRATION): - means the document issued to a contractor under these Rules and Regulations authorizing a contractor to conduct business in this state.

2.3 COMPANY: - means a corporation, partnership, firm or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

2.4 CEU: - ~~Me~~mmeans continuing education units. Each 10 hours of related professional development activities equals one CEU.

2.5 DEFICIENCY: - means ~~F~~for the purposes of inspection, testing, and maintenance of fire ~~supression~~suppression systems, a condition that will or has the potential to adversely impact the performance of a system or portion thereof but does not rise to the level of an impairment..

2.6~~5~~ DIRECTOR: - means the Director of the Division, or his designee.

2.7~~6~~ DIVISION: - means the Colorado Division of Fire Prevention and Control.

2.8~~7~~ FIRE SUPPRESSION SYSTEM: - means an assembly of any or all of the following: piping valves, conduits, dispersal openings, sprinkler heads, orifices, and other similar devices that convey extinguishing agents for the purpose of controlling, confining, or extinguishing fire, with the exception of multipurpose residential fire sprinkler systems in one- and two- family dwellings and townhouses that are part of the potable water supply, pre-engineered range hoods, duct systems, and portable fire extinguishers.

2.9 FIRE SPRINKLER SYSTEM: - means a fire suppression ~~or control device that operates automatically when its heat-activated element is heated to its thermal rating or above, allowing water to discharge over a specified area.~~system consisting of integrated piping, valves, sprinklers, and water supplies designed to be activated by the heat of a fire and discharge water over the fire area.

2.~~8~~10 ICC: - ~~M~~means the International Code Council.

2.11 IMPAIRMENT: - means a condition where a fire suppression system or unit or portion thereof is out of order, and the condition can result in the fire suppression system or unit not functioning in a fire event.

2.129 INDIVIDUAL (OR PERSON): - means a person, including an owner, manager, officer, employee, or individual.

2.13 INSPECTION, TESTING, AND MAINTENANCE SERVICE: - means a service program provided by a qualified contractor or qualified property owner's representative in which all components unique to the property's systems are inspected and tested at the required times and necessary maintenance is provided.

2.1405 ~~———~~INSTALLATION: - means the initial placement of equipment or the extension, modification, or alteration of equipment after the initial placement.

2.1516 ~~———~~LOCAL AUTHORITY HAVING JURISDICTION: - means the fire chief, fire marshal or other designated official of a county, municipality, or special district that has fire ~~suppression systems~~code enforcement responsibilities~~ and employs or otherwise provides a certified fire suppression systems inspector~~.

2.1627 ~~———~~MAINTENANCE: - means to sustain in a condition of repair that will allow performance as originally designed or intended.

2.1738 MULTIPURPOSE RESIDENTIAL FIRE SPRINKLER SYSTEM: - ~~M~~means a residential fire suppression system ~~that utilizes domestic water distribution piping to supply~~intended to serve both domestic and fire protection needs, utilizing a common piping system supplying both domestic plumbing fixtures and fire sprinklers ~~in accordance with NFPA 13D~~which does not contain a cross connection control device in the system piping. This does not include Passive Purge Systems as defined by NFPA 13D. A multipurpose system may also be referred to as a combination system or network system.

2.1849 NICET: - means the National Institute for Certification in Engineering Technologies.

2.1950 NFPA: - means the National Fire Protection Association.

2.20161 ~~———~~PERMIT: - m~~M~~eans a construction permit for a fire protection system issued by the Division ~~of Fire Safety~~ once construction plans or shop drawings have been approved or approved with corrections. A permit issued by the Division ~~of Fire Safety~~ allows a registered~~certified~~ fire suppression contractor to install or modify fire suppression systems, appurtenances, and equipment as shown on the approved drawings.

~~2.12 PEX PIPE: - Means cross-linked polyethylene pipe.~~

2.21~~73~~ ~~——~~PROFESSIONAL ENGINEER: - Licensed as an engineer and working within competence, training and/or education pertinent to the fire sprinkler industry.

2.22~~184~~ ~~——~~RESPONSIBLE MANAGING EMPLOYEE (RME): - ~~is~~ means an individual or person employed full time by a fire suppression contractor who is currently a professional engineer or certified by the National Institute for Certification in Engineering Technologies (NICET) at a level III or level IV in fire protection engineering technologies, automatic sprinkler layout, or another nationally recognized organization approved by the Division ~~of Fire Safety~~. A RME may only act as such for one fire suppression contractor.

2.23 RESIDENTIAL FIRE SUPPRESSION CONTRACTOR: - means a fire suppression contractor that, individually or through others, offers to undertake, represents itself as being able to undertake, or does undertake to sell, lay out, fabricate, install, modify, alter, repair, maintain, or perform maintenance inspections of a residential fire suppression system.

2.24 RESIDENTIAL FIRE SUPPRESSION SYSTEM: - means a fire suppression system designed for or installed in a one- or two-family dwelling or townhouse that is not regulated by the Colorado board of plumbers.

2.~~15~~ 25~~19~~ ~~——~~SERVICE (OR REPAIR): - means to repair in order to return the system to proper operational condition.

2.26~~0~~ SMALL PROJECT: - means any modification to an existing suppression system which has no adverse affect on the integrity of the existing fire protection system, including the hydraulic design, and which involves the addition or relocation of no more than 20 sprinkler heads.

2.27~~1~~ SPRINKLER FITTER: - means a person other than an apprentice who is registered with the administrator and who installs fire sprinkler systems. "Sprinkler fitter" does not include a person who performs maintenance and repair on fire suppression systems as a part of his or her employment. A sprinkler fitter does not include a person who performs work exclusively on cross-connection control devices or a person who performs work exclusively on an underground system. "Sprinkler fitter" does not include a person performing work on his or her own home.

2.28 TOTAL PROJECT VALUATION: - means the construction cost of the project including materials and labor, for which the permit is being issued. Such valuation of construction cost is equal to the cost of the project as demonstrated by detailed estimates provided by the Permit applicant.

2.29~~2~~ UNDERGROUND SUPPLY LINE: - means the piping and appurtenances downstream from the system installed and maintained by the municipal water supply which supplies water to the fire suppression system.

SECTION 3
~~REGISTRATION OF~~ FIRE SUPPRESSION SYSTEM CONTRACTOR~~S~~ REGISTRATION

3.1 Registration Required

~~3.1.1~~ Any individual or company that employs individuals who physically works on, designs, tests, inspects, or installs any part of a fire ~~protection~~ suppression system, including underground supply lines from public water lines to system risers and backflow ~~preventors~~preventers, must be registered.

~~3.1.2 Any company that employs individuals who physically work on or install any part of a fire protection system, including underground supply lines from public water lines to system risers and backflow preventors, must be registered.~~

~~3.1.3~~ Exemptions:

A. ~~Underground~~ Public utilities installing underground supply lines ~~installed by public utilities~~.

B. Building owners, conducting maintenance on their fire protection systems under the provisions of NFPA 25, and filing reports with the local fire department having certified fire suppression system inspectors or the ~~Colorado~~ Division ~~of Fire Safety~~. This exception does not apply to work conducted on system components that would require licensing, registration, or certification under any state or federal laws or regulations.

C. An individual ~~that~~ who installs a system in his or her single family residence (owner occupied) that is designed by a registered contractor and installed in accordance with NFPA 13D standards, and meets all local requirements.

D. Individuals or companies installing pre-engineered range hoods and duct extinguishing systems.

E. Companies or individuals that install, maintain, repair, or test Multipurpose Residential Sprinkler Systems or other systems that would be classified as plumbing under these rules and the definitions specified in Colorado State Board of Plumbers in CRS Title 12, Article 58.

3.2 Specific Registrations

3.2.1 Individuals or companies performing work in accordance with 3.1.~~1~~ on fire suppression systems in commercial, civil, or residential occupancies ~~shall~~must be registered as "FIRE SUPPRESSION SYSTEM CONTRACTOR"

3.2.2 Individuals or companies performing work in accordance with 3.1.~~1~~ on fire suppression systems only in residential occupancies in must be registered as "RESIDENTIAL FIRE SUPPRESSION SYSTEM CONTRACTOR"

3.2.3 Individuals or companies installing underground supply lines from public water lines to system risers ~~shall~~must be registered as "FIRE SUPPRESSION SYSTEM CONTRACTOR - UNDERGROUND".

3.2.4 Individuals or companies conducting installation, maintenance, service or testing of backflow prevention devices installed on fire sprinkler systems ~~shall~~must be registered as "FIRE SUPPRESSION SYSTEM CONTRACTOR - BACKFLOW".

~~3.1.4 Any company or individual conducting maintenance, service or testing of backflow prevention devices installed on fire sprinkler systems shall be a Certified Cross-Connection Control Technician and must possess a valid certification from the American Society of Sanitary Engineering (ASSE), the American Backflow Prevention Association (ABPA), or the Association of Boards of Certification (ABC), in conformance with requirements set forth by the Colorado Primary Drinking Water Regulations. The registration for individuals or companies who conduct maintenance, service or testing of backflow prevention devices shall be known as "FIRE SUPPRESSION SYSTEM CONTRACTOR – BACKFLOW."~~

~~3.1.5 The registration for individuals or companies who install underground supply lines from public water lines to system risers shall be known as "FIRE SUPPRESSION SYSTEM CONTRACTOR - UNDERGROUND".~~

~~3.1.6 Any individual or company registered as "FIRE SUPPRESSION SYSTEM CONTRACTOR - UNDERGROUND" may not install any other component of a fire suppression system.~~

~~3.1.7 Any individual or company registered as "FIRE SUPPRESSION SYSTEM CONTRACTOR - BACKFLOW" may not install any other component of a fire suppression system.~~

~~3.1.8 Any individual or company registered as "FIRE SUPPRESSION SYSTEM CONTRACTOR – MULTIPURPOSE" may only install multipurpose residential fire suppression systems complying with NFPA 13D requirements and for which they are authorized or have received specific system manufacturer's or PEX tubing manufacturer's training.~~

3.~~3~~2 Application Requirements

In order to register, each contractor doing business in Colorado must understand, agree, and attest to the following:

3.~~2~~3.1 That the applicant ~~has~~ must carry general liability insurance in the amount of at least $1 million that includes products and completed operations coverage related to the installation of suppression~~sprinkler~~ systems.

3.3.2 That the applicant is a principal of the company as defined in Colorado Revised Statutes 24-33.5-1202 (8), ~~and~~ which has been recorded with the Colorado Secretary of State's Office.

3.~~2~~3.3 That all information included on the application is correct.

3.~~2~~3.4 That the contractor will notify the Division ~~of Fire Safety~~ within thirty days of any changes that occur in the information provided~~,~~ including, but not limited to: a change in responsible managing employee or principal agent of the contractor~~, ; or~~ a change in address**,** telephone number, or e-mail address; or a change in insurance coverage.

3.~~2~~3.5 That the contractor will comply with Colorado Revised Statutes governing fire suppression systems; with all applicable rules, codes, and standards adopted by the ~~Administrator~~ Division; and with all codes, ordinances and resolutions adopted by municipalities, counties and fire protection districts in which they work.

~~3.2.6 That the contractor will comply with Colorado Revised Statutes governing fire suppression systems, and all rules adopted by the Administrator.~~

~~3.2.7 That the contractor understands that the "Application for Registration" is an official document legally binding the contractor to the provisions of Colorado Revised Statutes 4-33.5-1202 through 1208, et seq. and all rules adopted by the Administrator.~~

3.~~2~~3.~~8~~ 7 That the contractor must~~shall~~ not perform any installation or maintenance work on a fire suppression system in Colorado until such time as their registration has been formally issued by the ~~Administrator~~Division.

3.~~3~~4 Application Procedures ~~for Registration~~

3.4.1 A ~~fire suppression~~ contractor ~~can pick up an "Application for Registration", or request that one be mailed, or the contractor can obtain an application on the Division of Fire Safety's website.~~must apply for registration in a format provided by the Division. ~~Registration a~~Application~~s~~ instructions are available on the Division's website (www.dfpc.state.co.us); from ~~the Colorado Division of Fire Safety, 9195 East Mineral Avenue, Suite 234, Centennial, CO 80112~~the

Division's offices at 700 Kipling St, Suite 4100, Denver, CO 80215; or by t~~T~~elephone at ~~720-852-6735~~303-239-4100.

3.4.2 The contractor must submit the completed ~~all parts of the~~ application along with the registration fee and all required supporting documentation prior to action by the Division. ~~and sign it. The original application, along with a check or money order in payment of the annual registration fee, must be returned to the Division of Fire Safety~~No cash payments will be accepted.

3.4.3 The contractor must submit documentation of general liability insurance in the amount of at least $1 million that includes products and completed operations coverage related to the installation of suppression~~sprinkler~~ systems. The documentation submitted must~~shall~~ ~~include~~ identify inclusion and exclusions of the coverage. Policies for contractors installing CPVC piping ~~shall~~must carry a CPVC rider.

3.4.4 The Division ~~of Fire Safety~~ will verify existence and/or good standing with the Secretary of State.

3.4.5 The registration is valid from the time of issue to December 31st of the current year, unless earlier revoked or suspended. It must be renewed annually, on or before December 31st of each year. A grace period for renewal may be extended for thirty days after expiration, after which a late application fee will be assessed.

3.4.6 New applicants must submit a completed and notarized Affidavit of Legal Residency as required in 24-76.5-103(4)(b), C.R.S.

3.5~~4~~ Qualifications for Registration -- ~~for sprinkler~~Fire Suppression System Contractors: ~~(Effective Date January 1, 2003)~~

3.5.1 ~~In order to become registered as a~~A Fire Suppression Contractor~~,~~ ~~the Contractor~~ must employ a Responsible Managing Employee,

--or--

Contractors without a ~~Responsible Managing Employee~~RME on staff must demonstrate qualifications acceptable to the ~~administrator~~ Division~~their qualifications,~~ including education, training and experience in the fire suppression industry. Contractors registered under this provision must operate under the specific limitations established by the Division.~~The contractor will be required to submit documentation of at least 2.0 continuing education units (CEU's) annually. The contractor will receive a specific amount of CEU's for various fire suppression development activities as depicted in the table below:~~

3.5.2 Fire Suppression System Contractors regulated by this rule must not allow a person to work on a fire sprinkler system who is not registered with the Division as a Sprinkler Fitter.

Exemption: Persons who are enrolled in a sprinkler fitter apprenticeship program and are under the direct supervision and immediate presence of a registered sprinkler fitter may perform work on a fire suppression system.

3.6 Specific requirements for Residential Fire Suppression System Contractors:

3.6.1 A Residential Fire Suppression System Contractor must employ a RME,

--or--

Contractors without a RME on staff must demonstrate to the Division their qualifications including education, training, and experience in the residential fire suppression industry.

3.6.2 The applicant must be required to document successful completion of residential sprinkler system training, completion of NFPA 13D related coursework, or other residential suppression system training as approved by the Division.

Codes and Standards Assessment (CSA) Sprinkler Residential On-Site Competent Person Exam (ASR2) or Sprinkler Commercial/Residential On-Site Competent Person (ASCR2) satisifies this experience requirement.

3.6.3 For individuals installing CPVC or PEX piping systems, the applicant must provide a certificate of successful completion of the applicable training course by the manufacturer or their representative.

3.6.4 Before installing a pre-engineered residential fire suppression system, applicants must demonstrate that they are authorized and certified by the system manufacturer to install that specific residential fire suppression system.

3.7 Specific requirements for Fire Suppression System Contractors-Backflow

3.7.1 A Fire Suppression System Contractor-Backflow must employ cross-connection control technicians holding valid certification from the American Society of Sanitary Engineering (ASSE), the American Backflow Prevention Association (ABPA), or the Association of Boards of Certification (ABC), in conformance with requirements set forth by the Colorado Primary Drinking Water Regulations.

3.8 Specific requirements for Fire Suppression System Contractors-Underground.

3.8.1 There are no special requirements for this registration

1. Participation as a student in a seminar related to fire suppression system conducted by a qualified organization, including but not limited to National Fire Protection Association, National Fire Sprinkler Association, American Fire Sprinkler Association, Oklahoma State University, National Fire Academy, or any other nationally recognized organizations approved by the administrator.	0.1 for each clock hour of attendance
2. Working for a minimum of five years in the fire sprinkler system industry as a designer and/or installer.	1.0 maximum annually
3. Active service on a committee or board service with a fire sprinkler association or organization.	0.5 per committee or board
4. Attendance at NFPA and/or ICC code development hearings related to fire sprinkler systems.	1.0 per hearing
5. Participated in an apprentice training program with fire suppressions system industry organizations, for a minimum of five years.	0.1 maximum annually
6. Has tested as a fire sprinkler contractor and holds a current license or certification issued by another state or local jurisdiction, subject to approval of the Division of Fire Safety.	1.0 maximum

3.5 Procedures for Registration – Underground Contractor

In order to become registered as a fire suppression system contractor - "underground", the applicant must provide the administrator with all of the following documentation:

3.5.1 The applicant is a principal of the company as defined in Colorado Revised Statutes 24-33.5-1202 (8) and the company shall be recorded with the Colorado Secretary of State's Office.

3.5.2 The contractor must complete all parts of the application and sign it. The "Application for Registration" is an official document legally binding the contractor to the provisions of Colorado Revised Statutes and all rules adopted by the administrator that pertain to the installation of underground fire lines.

3.5.3 The contractor must carry general liability insurance that includes products and completed operations coverage related to their industry. The documentation submitted must include inclusions and exclusions of coverage.

3.5.4 The registration is valid from the time of issue to December 31st of the current year, unless earlier revoked or suspended. It must be renewed annually, on or before January 31st of each year.

3.6 Procedures for Registration – Backflow Contractors

In order to become registered as a fire suppression system contractor - "Backflow", the applicant must provide the administrator with all of the following documentation:

3.6.1 The applicant is a principal of the company as defined in Colorado Revised Statutes 24-33.5-1202 (8) and the company shall be recorded with the Colorado Secretary of State's Office.

3.6.2 The contractor must complete all parts of the application and sign it. The "Application for Registration" is an official document legally binding the contractor to the provisions of Colorado Revised Statutes and all rules adopted by the administrator that pertain to the installation of backflow prevention

3.6.3 The contractor must obtain carry general liability insurance that includes products and completed operations coverage related to their industry. The documentation submitted must include inclusions and exclusions of coverage.

3.6.4 The registration is valid from the time of issue to December 31st of the current year, unless earlier revoked or suspended. It must be renewed annually, on or before January 31st of each year.

3.7 Procedures for New Registration – Multipurpose Contractor

In order to become registered as a Fire Suppression System Contractor – Multipurpose, the applicant must provide the administrator with all documentation specified in Sections 3.3 and 3.4 and all of the following information

3.7.1 The applicant shall be a principal of the company as defined in Colorado Revised Statutes 24-33.5-1202 (8) and the company shall be recorded and be listed in "good standing" with the Colorado Secretary of State's Office.

3.9 Denial of Application

The Division may deny any application for registration for the following reasons:

1. False statements on the application form or in any of the attachments required for registration;

2. Failure to meet or complete all requirements specified within the application;
3. The applicant is currently barred from registration, certification, or licensure from another State agency, governing body, or local jurisdiction.
4. The applicant has been convicted of a crime which reflects upon the integrity of the applicant in operating within the capacity for which they are registered.
5. The applicant has been terminated from employment from a registered fire suppression contractor, fire authority, or other governing body for engaging in negligent or unsafe work or construction practices.

3.10 Registration renewal

RME's must demonstrate that they have maintained their appropriate certifications or licensure. Persons otherwise qualified must demonstrate CEU's in accordance with 5.2.

SECTION 4
FIRE SUPPRESSION SYSTEM INSPECTOR CERTIFICATION

4.1 Certification required

~~Colorado Revised Statutes 24-33.5-1206.4 requires that a~~Any installation, modification, alteration, or repair of a fire suppression system ~~shall~~must be approved by ~~a~~ certified Fire Suppression Systems Inspectors. Each county, municipality, or special district that has fire suppression systems enforcement responsibilities ~~shall~~must, as needed, provide ~~a~~ certified fire~~s~~ suppression systems inspectors certified to the appropriate level.

Exemption: Inspectors of multipurpose residential sprinkler systems ~~shall~~must meet the requirements of the State Board of Plumbing and are not regulated by the Division.

4.1.1 Individuals performing plan reviews on fire suppression systems other than residential sprinkler systems ~~shall~~must be certified as Fire Suppression Systems Inspector-Plan Reviewer.

4.1.2 Individuals performing inspections on fire suppression systems other than residential sprinkler systems ~~shall~~must be certified as Fire Suppression Systems-Inspector or Fire Suppression Systems Inspector-Plan Reviewer.

4.1.3 Individuals performing plan reviews or inspections for compliance of residential sprinkler systems ~~shall~~must be certified as Fire Suppression Systems Inspector-Residential, Fire Suppression Systems-Inspector, or Fire Suppression Systems Inspector-Plan Reviewer.

4.3 Application Requirements

In order to become certified, each applicant must understand, agree and attest to the following:

4.3.1 That the applicant is employed by or volunteers for an authority having jurisdiction over the installation of fire suppression systems

4.3.2 That the applicant is responsible for inspection, testing, and/or plan review of fire suppression systems within that jurisdiction

4.3.3 That all information included on the application is correct.

4.3.4 That the certified individual will notify the Division within thirty days of any changes that occur in the information provided in the application.

4.3.5 That the certified individual will comply with all applicable codes and standards adopted by the Division and all codes, ordinances and resolutions adopted by municipalities, counties or fire protection districts for which they work.

4.3.6 That the certified individual will comply with Colorado Revised Statutes governing fire suppression systems, and all rules adopted by the Division.

4.3.7 That the certification is valid for three years from the time of issue, unless earlier revoked or suspended and must be renewed prior to expiration.

4.3.8 New applicants ~~shall~~must submit a completed and notarized Affidavit of Legal Residency as required in 24-76.5-103(4)(b), C.R.S.

4.4 General Requirements for all Certifications

4.4.1 An inspector ~~shall~~must apply for certification in a format provided by the Division. Application instructions are available on the Division's website (www.dfpc.state.co.us); from the Division's offices at 700 Kipling St, Suite 4100, Denver, CO 80215; or by telephone at 303-239-4100.

4.4.2 The applicant must submit the completed application along with the registration fee and all required supporting documentation prior to action by the Division. No cash payments will be accepted.

4.4.3 The application must be accompanied by a letter from the agency's chief executive or code official responsible for inspection and plan review of fire suppression systems attesting:

4.3.3.1 That the individual is currently employed by or volunteers with a county, municipality, special district, or state agency that has fire suppression system enforcement responsibility.

4.3.3.2 That the agency is responsible for fire suppression system enforcement in their jurisdiction.

4.3.3.3 That the individual has the responsibility to conduct fire suppression system plan reviews and/or inspections.

4.3.3.4 That the individual meets the qualifications (knowledge, skills and ability) to conduct fire suppression system plan reviews and/or inspections.

4.4.4 The applicant ~~shall~~must provide evidence of certification, education and/or training directly related to plan review and/or inspections of fire suppression systems appropriate for the certification being sought. Courses ~~shall~~must be taught by recognized organizations or institutions including, but not limited to:

(a) Regionally accredited post-secondary institutions
(b) National Fire Protection Association
(c) International Code Council
(d) National Fire Academy
(e) American Fire Sprinkler Association

(f) National Fire Sprinkler Association
(g) Sprinkler Fitters Local 669, Joint Apprenticeship and Training Committee
(h) IFMA Fire Protection Institution
(j) State chapters of organizations or institutions listed above

4.4.5 For applicants seeking reciprocity, submit evidence of current and valid certification from another state or jurisdiction which is determined by the Division to be at least equivalent to the requirements of the Colorado Fire Suppression Program.

4.4.6 Limitations /Permissible Activities

4.4.6.1 A Certified Fire Suppression Systems Inspector may not also be a registered contractor.

4.4.6.2 A Certified Fire Suppression Systems Inspector may not contract directly with a registered contractor, contractor, or building owner for the provision of inspection services.

4.4.6.3 A certified inspector may contract directly, or through his employer, with one or more municipalities, counties, fire protection districts or other local authority having jurisdiction for the provision of inspection services.

4.5~~2~~ Requirements for Fire Suppression Systems Inspector-Plan Reviewer

In order to become certified as a F~~f~~ire ~~s~~Suppression S~~s~~ystems I~~i~~nspector-Plan Reviewer, a person must meet at least one of the following conditions:

4.5~~2~~.1 Satisfactorily complete a F~~f~~ire S~~s~~uppression S~~s~~ystems I~~i~~nspector-Plan Reviewer certification examination, administered by the Division~~ of Fire Safety, by correctly answering at least 80 percent of the questions~~.

4.5.2 Possess current and valid inspector certification ~~accredited~~ in accordance with NFPA 1031 issued by a nationally recognized organization which includes fire ~~protection~~ suppression system plan review and inspection knowledge~~, and demonstrate to the Administrator that they have successfully completed course work in fire suppression system plan review and inspection~~. ICC Fire Inspector II or NFPA Certified Fire Inspector II certifications

--and—

Certified Fire Plans Examiner issued by ICC or NFPA meet this requirement.

4.5.3 Demonstrate to the ~~Administrator~~ Division that ~~they have~~he or she has met equivalent qualifications~~,~~ including education, training, and experience~~–~~, in the categories of fire suppression, fire sprinkler, or life safety~~by submitting documentation to the Division~~.

A. Prerequisite Knowledge, Skill and Ability Required:

(1) Plan review of fire ~~protection~~ suppression systems.
(2) Understand~~ing~~ the application of NFPA Standards related to fire suppression systems.
(3) Sprinkler system identification and components, including, but not limited to: quick response sprinklers; residential sprinklers; early suppression fast response sprinklers; and large drop sprinklers.
(4) Sprinkler system installation requirements, including: spacing, obstruction rules, response time index and design densities.
(5) Water supply and pressure requirements.
(6) Hydraulic calculations.
(7) Inspection, testing and maintenance procedures for: sprinklers, standpipes, private fire service mains, fire pumps, and valves and controls.
(8) System impairment, notification and correction.
(9) Flow test and fire pump testing procedures.
(10) Understanding the application of Colorado Law for fire suppression systems.
(11) Understand~~ing~~ the application of the International Building Code, International Residential Code, and International Fire Code to fire suppression systems.

B. Acceptable equivalent qualifications are:

(1) Associate Degree or above in fire science technology or~~,~~ fire prevention~~, or other fire inspection major~~ from a regionally accredited post-secondary institution~~. Such degree must~~ which includes at least 6 semester ~~equivalent~~ credit hours in fire prevention code enforcement, plan review, or suppression system design.
(2) ~~A Colorado~~Current registration ~~registered~~ in Colorado as an engineer specializing in fire protection.
(3) ~~A c~~Current registration as a NICET Level III or above in Water Based Layout.
(4) At the Division's sole discretion, ~~E~~evidence of completion of courses that directly relate to plan review and inspections of fire suppression systems delivered by a recognized organization or institution, ~~including, but not limited to:~~
~~(a) Oklahoma State University~~
~~(b) National Fire Protection Association~~

~~(c) National Fire Academy~~
~~(d) American Fire Sprinkler Association~~
~~(e) National Fire Sprinkler Association~~
~~(f) IFMA Fire Protection Institute~~
~~(g) University of Maryland~~
~~(h) International Code Council~~as identified in 4.4.4

4.5~~2~~.4 Submit evidence of current and valid certification in another state or jurisdiction, which is determined by the ~~Administrator~~ Division to be at least equivalent to the requirements of the Colorado Fire Suppression Program.

4.6 Requirements for Fire Suppression Systems Inspector

In order to become certified as a Fire Suppression Systems Inspector, a person must meet at least one of the following conditions:

4.6.1 Satisfactorily complete a Fire Suppression Systems Inspector certification examination, administered by the Division.

4.6.2 Possess current and valid inspector certification ~~accredited~~ in accordance with NFPA 1031issued by a nationally recognized organization- which includes fire suppression systems inspection knowledge. ICC Fire Inspector II or NFPA Certified Fire Inspector II certifications meet this requirement.

4.6.3 Demonstrate to the Division that he or she has met equivalent qualifications, including education, training and experience, in the categories of fire suppression, fire sprinkler, or life safety.

A. Prerequisite Knowledge, Skill and Ability Required:

(1) Understand the application of NFPA Standards related to fire suppression.
(2) Sprinkler system identification and components, including: quick response sprinklers, residential sprinklers, early suppression fast response sprinklers, and large drop sprinklers.
(3) Sprinkler system installation requirements, including: spacing, obstruction rules, response time index and design densities.
(4) Water supply and pressure requirements.
(5) Inspection, testing and maintenance procedures for: sprinklers, standpipes, private fire service mains, fire pumps, and valves and controls.
(6) System impairment, notification and correction.
(7) Flow test and fire pump testing procedures.
(8) Understand the application of Colorado Law for fire suppression systems.

(9) Understand the application of the International Building Code, International Residential Code, and International Fire Code to fire suppression systems.

B. Acceptable equivalent qualifications are:

(1) Currently registered as a NICET Level II in Water Based Layout.
(2) At the Division's sole discretion, evidence of completion of courses that directly relate to plan review and inspections of fire suppression systems delivered by a recognized organization or institution, as identified in 4.4.4.

4.6.4 Submit evidence of current and valid certification from another state or jurisdiction which is determined by the Division to be at least equivalent to the requirements of the Colorado Fire Suppression Program.

4.7 Requirements for Fire Suppression Systems Inspector-Residential

In order to become certified as a Fire Suppression Systems Inspector-Residential, a person must meet at least one of the following conditions:

4.7.1 Satisfactorily complete a Fire Suppression Systems Inspector-Residential certification examination, administered by the Division.

4.7.2 Possess current and valid inspector certification issued by a nationally recognized organization which includes residential fire suppression system plan review and inspection knowledge. ICC Fire Inspector II, ICC Residential Fire Sprinkler Inspector/Plans Examiner, ICC Residential Fire Sprinkler Design/Installation, or NFPA Certified Fire Inspector II certifications meet this requirement.

4.7.3 Demonstrate to the Division that he or she has met equivalent qualifications, including education, training and experience, in the categories of fire suppression, fire sprinkler, or life safety.

Prerequisite Knowledge, Skill and Ability Required:

(1) Understand the application of the NFPA 13D Standard related to the residential fire suppression industry.
(2) Sprinkler system identification and components, including: quick response sprinklers, residential sprinklers, freeze protection, pumps, water storage, and alarm devices
(3) Sprinkler system installation requirements, including: spacing, obstruction rules, response time index, pipe use, and design densities.

(4) Water supply and pressure requirements including loss of pressure through water meters, cross-connection devices, and other appurtenances.
(5) Inspection, testing and maintenance procedures for: sprinklers, fire pumps, expansion tanks, freeze protection systems, valves, and controls.
(6) Flow test and fire pump testing procedures.
(7) Understand the application of Colorado Law for fire suppression systems.
(8) Understand the application of the International Residential Code, and International Fire Code to fire suppression systems.

Acceptable equivalent qualifications are:

(1) Currently registered as a NICET Level II in Water Based Layout.
(2) At the Division's sole discretion, evidence of completion of courses that directly relate to plan review and inspections of residential fire suppression systems delivered by a recognized organization or institution, as identified in 4.4.4.

4.7.4 Submit evidence of current and valid certification from another state or jurisdiction which is determined by the Division to be at least equivalent to the requirements of the Colorado Fire Suppression Program.

~~4.2 In all cases, the application must be accompanied by a letter from the agency's chief executive attesting to:~~

~~4.4.2 The individual is employed by a county, municipality, special district, or state agency that has fire suppression system enforcement responsibility.~~

~~4.4.3 The agency is responsible for fire sprinkler enforcement in their jurisdiction.~~

~~4.4.4 The fact that the individual has the responsibility to conduct fire suppression system plans reviews and/or inspections.~~

~~4.4.5 The individual's qualifications (knowledge, skills and ability) to conduct fire suppression system plan reviews and inspections.~~

~~4.4 Limitations on Certification/Permissible Activities~~

~~4.4.1 A certified fire suppression systems inspector cannot also be a registered contractor.~~

~~4.8.2 A certified fire suppression systems inspector cannot contract directly with a registered contractor for the provision of inspection services.~~

~~4.8.3 A certified inspector can contract directly with one or more municipalities, counties, fire protection districts or other local authority for the provision of inspection services.~~

4.8 Fire Suppression System Inspector Written Examinations

4.8~~5~~.1 ~~The w~~Written ~~e~~Examinations ~~(if offered by the Division)~~ ~~shall~~ will consist of multiple-choice questions derived from the Colorado fire suppression statutes ~~and~~ , rules, codes, and standards ~~promulgated by the Administrator; as well as the codes and standards~~ adopted by the ~~Administrator~~Division.

4.8~~5~~.2 Candidates must correctly answer eighty percent (80%) of the questions on the examination to become certified.

4.8.3 Candidates ~~that~~ who do not achieve a passing score may retake the examination after thirty (30) days have elapsed, ~~and~~ upon re-application and payment of the ~~application~~ testing fee.

4.9 Duration of Certification

4.9~~7~~.1 F~~F~~ire s~~S~~uppression s~~S~~ystem i~~I~~nspector c~~C~~ertifications ~~is~~ are valid for a period of three years from the date of issuance, unless earlier suspended or revoked.

4.9.2 Certified inspectors who are separated from employment may not perform plan review or inspection services unless they become employed with a new agency and provide a letter pursuant to Section 4.4.3.

4.10 Certification renewal. Renewal of certification is the responsibility of the certified individual**.** An individual who wa~~i~~s certified as a Fire Suppression Systems Inspector prior to January 1, 2015 may perform all of the responsibilities of a Fire Suppression Systems Inspector~~-~~ ~~—~~Plan Reviewer until certification is expired. Upon application for renewal he or she will be certified as a Fire Suppression Systems Inspector~~-r —~~Plan Reviewer.

4.10.1 Renewal ~~shall~~ will require an application accompanied by the following:

~~4.7.1~~ A. A letter ~~from the agency''s chief executive attesting to the fact that the individual has maintained the knowledge, skills and ability to continue to conduct fire suppression system plan reviews and inspections, and the fact that the individual continues to have the responsibility to conduct fire suppression system plans reviews and/or inspections, AND~~in accordance with section 4.4.3.

~~4.7.2 Certification renewal is contingent on meeting one of the following educational requirements during the certification period:~~

~~A. Twenty four hours of continuing education relating to the field of fire protection including, but not limited to classes, seminars, and training conducted by professional organizations or trade associations; or.~~

B. ~~B~~ Documentation ~~to the administrator~~of 2.4 continuing education units (CEU's) relevant to the field of fire ~~protection~~ suppression as indicated in Table 4.10.1.~~by participation in educational and professional activities. CEU's will be granted for the professional development activities as depicted in the table below: (It is important to obtain documentation and keep records of each activity attended during the certification period).~~

C. Payment of the required renewal fee.

4.10.2 CEUs will be granted for professional development activities as indicated in table 4.10.2. Applicants are responsible to obtain certificates or other proof of attendance for each activity.

Table 4.10.2

1) Participation as a student in a seminar related to fire suppression systems conducted by a qualified organization~~. Including but not limited to National Fire Protection Association, National Fire Sprinkler Association, American Fire Sprinkler Association, Oklahoma State University and National Fire Academy Fire Marshals Association of Colorado training sessions etc.~~. (See 4.4.4)	0.4 ~~0.1~~ per clock ~~-~~hour of attendance
~~2) International Code Council Education Institute. Courses must be relevant to fire suppression systems (Because the certificate received at the institute does not break down the courses taken. The class breakdown received at the registration table is the documentation needed to receive credit for the ICC institute.)~~	~~0.1 for each clock hour of attendance~~
~~3)~~2) Fire c~~C~~ode~~,~~ or b~~B~~uilding code overview classes	0.4 maximum Per course
3) Active service on a committee or board with a fire sprinkler association or organization	0.5 per committee or board
4) Attendance at NFPA and/or ICC code development hearings related to fire ~~sprinkler~~ suppression systems.	1.0 per ~~three~~ 3-year period
5) Completion of a college level course related to fire suppression systems offered through a regionally accredited post-secondary institution	1.0 per credit hour earned, 3.0 max per 3-year period.

6) Active certification by ICC or NFPA to the appropriate level.	1.5 per 3-year period
~~5)~~7) Working as a certified fire suppression inspector, conducting plans review and/or inspections of fire sprinkler systems for at least one year during each renewal period (~~shall~~must be documented through a formal letter from agency's chief executive or code official responsible for inspection and plan review of fire suppression systems.)	1.0 per ~~three~~ 3-year period

4.10.3 An inspector whose certification has lapsed may reapply within 60 days of certificate expiration, provided that they pay the required late application fee as well as the renewal fee. Inspectors who do not apply within 60 days of their certification expiration date will not be allowed to renew and must comply with the requirements of a new applicant.

~~B Obtain .8 CEU's relevant to the field of fire protection plan review and inspection AND satisfactory completion of a fire suppression systems inspector certification renewal examination if the conditions in Rule 4.6.2.A were not met.~~

~~4.7.3 Payment of the required renewal fee.~~

~~4.8 Municipalities, counties, fire protection districts and other state or local authorities employing certified fire suppression inspectors must maintain records of all plan reviews and inspections conducted by the inspector during the three year certification period. Said records shall be made available for review by the Administrator, upon request.~~

4.11~~9~~ Inspectors must place their certification number on all completed inspection and plan ~~registration forms~~review reports.

4.12~~0~~ Denial of Application

The Division may deny any application for certification for the following reasons:

1. False statements on the application form or in any of the attachments required for registration;
2. Failure to meet or complete all requirements specified within the application;
3. The applicant is currently barred from registration, certification, or licensure by another State agency, governing body, or local jurisdiction.
4. The applicant has been convicted of a crime which reflects upon the integrity of the applicant in operating within the capacity for which they are registered.
5. The applicant has been terminated from employment from a registered fire suppression contractor, fire authority, or other governing body for engaging in negligent or unsafe work or construction practices.

SECTION 5
SPRINKLER FITTER REGISTRATION

5.1 Registration Required

No person ~~shall~~may act, assume to act, or advertise as a Sprinkler Fitter who is not currently registered with the Division.

5.1.1 A Sprinkler Fitter ~~shall~~may work on fire suppression systems only under the employ of a registered fire suppression system contractor. A Sprinkler Fitter may be self-employed provided that he or she is also registered as a fire suppression system contractor

5.2 Application Requirements

5.2.1 In order to become registered, applicant must submit the completed application along with the registration fee and all required supporting documentation prior to action by the Division. No cash payments will be accepted.

5.2.2 The applicant must provide proof of at least one of the following:

That he or she has successfully completed an accredited sprinkler fitter apprenticeship program recognized by the United States Department of Labor or state apprenticeship agency, in accordance with the requirements of 29 CFR 29.1 et seq, or other similar apprenticeship program approved by the administrator;

--or--

That the applicant is currently authorized to practice as a Sprinkler Fitter in another state or jurisdiction that has substantially similar or greater requirements than the requirements established in this rule;

--or--

That the applicant has documentary evidence demonstrating the performance of at least eight thousand (8,000) hours of practical work experience on fire suppression systems within the past five (5) years;

--or--

That the applicant can otherwise demonstrate similar competency as a Sprinkler Fitter as determined by the Division.

5.2.3 The applicant ~~shall~~must attest that all information included on the application is correct.

5.2.4 The Sprinkler Fitter ~~shall~~must notify the Division within thirty days of any changes that occur in the information provided including, but not limited to: a change in principal agent of the contractor; a change in address**,** telephone number, or e-mail address.

5.2.5 The Sprinkler Fitter will comply with Colorado Revised Statutes governing fire suppression systems; with all applicable rules, codes, and standards adopted by the Division; and with all codes, ordinances and resolutions adopted by municipalities, counties and fire protection districts in which they work.

5.2.6 The applicant ~~shall~~may not perform any installation or maintenance work on a fire suppression system in Colorado until such time as their registration has been formally issued by the Division.

5.2.7 The applicant ~~shall~~must pass a Division approved examination. In addition to tests offered by the Division, the following examinations are approved for compliance with the examination requirement:

(a) STAR Fire Sprinklerfitting Mastery Exam
(b) CSA Sprinkler Commercial On-site Competent Person Exam (ASCR2)
(c) City of Denver's Fire Sprinkler Systems Installer Examination

Examinations specified in these rules taken to comply with another jurisdiction's registration requirements ~~shall~~will be accepted by the Division if the exam was taken within one (1) year of the application date.

5.2.8 New applicants ~~shall~~must submit a copy of their current State's driver's license or Colorado Identification Card.

5.2.9~~10~~ Applicants ~~shall~~must pay all fees associated with the registration.

5.3 Duration of Registration

The registration period for new and renewal registrations ~~shall~~will expire on June 30th each year regardless of when the registration was issued, unless earlier suspended or revoked. There ~~shall~~will be no pro-rating of registration fees. A grace period for renewal may be extended for thirty days after expiration, after which a late application fee will be assessed.

5.4 Registration Renewal

Renewal of certification is the responsibility of the certified individual**.**

5.4.1 Registrants requesting a renewal of their sprinkler fitter registration must complete an application, provide documented continuing education, and pay a renewal fee.

5.4.2 Registrants ~~shall~~must document at least 2.4 continuing education units (CEU's) relevant to the field of fire suppression as indicated in Table 5.4.2

Table 5.4.2

1) Participation as a student in a seminar related to fire suppression systems conducted by a qualified organization. (See 4.4.4)	0.1 per clock hour of attendance
2) Fire code or building code overview classes	0.4 maximum Per course
3) Attendance at NFPA and/or ICC code development hearings related to fire suppression systems.	1.0 max
4) Active service on a committee or board with a fire sprinkler association or organization	0.5 per committee or board
5) Completion of a college level course related to fire suppression systems offered through a regionally accredited post-secondary institution	1.0 per credit hour earned. 3.0 max
6) Work experience as a registered sprinkler fitter during the registration period (~~shall~~must be documented through formal letter from employer, contractor, project owner, steward, project manager, or business manager for whom the project was performed).	01. CEU per 100 hours worked. 1.6 max.

5.4.3 In years that the division adopts a new edition of the fire code or standards, a sprinkler fitter ~~shall~~will be required to provide proof of passing one of the examinations specified in 5.2.7. An additional fee will be assessed for those taking an ~~DFPC offered~~ exam offered by the Division.

5.4.4 Registrants whose registration has lapsed may reapply within 30 days of registration expiration, provided that they pay the required late application fee as well as the renewal fee. ~~Registrants~~Fitters who do not apply within 30 days of their registration expiration date will not be allowed to renew and must comply with the requirements of a new applicant.

5.5 Denial of Application

The Division may deny any application for registration for the following reasons:

1. False statements on the application form or in any of the attachments required for registration;

2. Failure to meet or complete all requirements specified within the application;
3. The applicant is currently barred from registration, certification, or licensure by another State agency, governing body, or local jurisdiction.
4. The applicant has been convicted of a crime which reflects upon the integrity of the applicant in operating within the capacity for which they are registered.
5. The applicant has been terminated from employment from a registered fire suppression contractor, fire authority, or other governing body for engaging in negligent or unsafe work or construction practices.

SECTION 6
~~PLANS REQUIRED - INSPECTIONS~~FIRE SUPPRESSION CONTRACTOR RESPONSIBILITIES

This Section identifies the responsibilities of fire suppression system contractors.

6.1 Credentials

6.1.1 Registered contractors ~~shall~~must provide their registration number on all plan review applications and correspondence.

6.1.2 To ensure that only qualified persons are conducting plan reviews or inspections, the contractor ~~shall~~must request the certification number of any local inspector reviewing or inspecting their job.

6.1.2.1 If in doubt, a contractor may verify a local person's credentials on the Division's website or by mail or phone (See Section 13).

6.2 Requirements for plan submittal

Suppression systems ~~shall~~must not be installed or modified unless plans have been approved by a certified Fire Suppression System Inspector-Plan Reviewer in accordance with this section.

Exemptions:

A. Pre-engineered range hoods and duct extinguishing systems.

B. Any work defined as "plumbing" by the Colorado Board of Plumbing or CRS 12-58-102

C. Any work described in this Rule that is conducted at any facility owned and operated by a mining company.

6.2.1 Plans, product data sheets, and hydraulic calculations ~~shall~~must be submitted to the AHJ prior to the installation, fabrication, modification, or alteration of any fire suppression system in the State of Colorado.

Exemption:

1. Hydraulic calculations are not required for small projects unless, in the opinion of the AHJ, the hydraulic design of the existing system may be affected by the scope of work.
2. Hydraulic calculations are not required for residential, prescriptive pipe-schedule systems if designed in accordance with adopted standards.

6.2.2 If a local AHJ employs a Fire Suppression System Inspector-Plan Reviewer, required documents ~~shall~~must be submitted in accordance with local rules.

6.2.3 If a local AHJ does NOT employee a Fire Suppression System Inspector-Plan Reviewer the required documents ~~shall~~must be submitted to the Division for review.

6.2.3.1 Submittal requirements are posted on the Division's website. It is the contractor's responsibility to ensure that all necessary documents are provided before a review can commence.

6.2.3.2 Once reviewed and acted upon by the Division, the contractor ~~shall~~must send one set of approved plans to the local AHJ.

6.2.4 Plans and hydraulic calculations must bear the signature of a P.E. or NICET level III or above. This signature attests that the plans have been reviewed and meet the intent of the standard.

Exemption:

3. No signature is required for small projects unless, in the opinion of the AHJ, the hydraulic design or integrity of the existing fire protection system may be affected by the scope of work.
4. Residential, prescriptive pipe-schedule design do not require a signature if in accordance with adopted standards.

6.2.5 Hydraulic Calculations

6.2.5.1 Flow tests on water supply systems must be less than one year old, unless approved by the Fire Suppression System Inspector-Plan Reviewer.

6.2.5.2 When calculating water supply requirements for new installations, deduct ten (10) percent to a maximum of (10) psi from the static and residual

pressure. Show the actual flow and reduction on hydraulic calculation sheets.

Exemption. 13D Systems (One and two family dwellings) unless required by the local authority having jurisdiction.

6.2.6 Special rules for small project submittals

6.2.6.1 In lieu of full-sized drawings, an AHJ may allow the submittal of a scale drawing of the proposed project on 8½ x 11 inch paper, including product data sheets, calculations, and all information required by the applicable NFPA standard. The certified fire suppression system inspector has the right to require additional information as may be necessary to fully evaluate the project.

6.2.6.2 A signed letter on the registered contractor's letterhead ~~shall~~must be submitted explaining the scope of work and a statement that tenant finish, remodel, or additions do not affect the hydraulic demand design or integrity of the existing fire protection system

6.3 General requirements for installation of suppression systems.

6.3.1 One set of plans and product data sheets, approved by the certified fire suppression plan reviewer, ~~shall~~must remain on the job site for use by the inspector. No deviations from the approved plans are allowed unless approved by the Fire Suppression System Inspector-Plan Reviewer.

Exemption: Minor modifications required to adapt to unexpected on-site conditions which do not affect a system's integrity or hydraulic design.

6.3.2 All components, including aboveground and underground piping must be accessible for inspection by a Fire Suppression Systems Inspector. Whenever any installation subject to inspection is covered or concealed prior to being inspected, the inspector ~~shall~~must have the authority to require that such work be exposed for inspection.

6.3.3 A "Contractor's Material and Test Certificate for Aboveground Piping" or "Contractor's Material and Test Certificate for Underground Piping", as appropriate, must be completed with all test results documented and copies provided by the contractor to the owner and Fire Suppression Systems Inspector.

6.3.4 Required hydrostatic, operational, and flush testing ~~shall~~must be witnessed and signed by a certified fire suppression system inspector. At the discretion of the inspector, all or part of the test may be witnessed by the general contractor or another responsible, independent party.

6.3.5 Contractors ~~shall~~may not allow persons to work on fire suppression systems who are not registered with the Division as Sprinkler Fitters.

Exemptions:

A. Persons who are enrolled in a Sprinkler Fitter apprenticeship program and are under the direct supervision and immediate presence of a registered Sprinkler Fitter.

B. Persons working under the auspices of Fire Suppression Contractors-Underground, Fire Suppression System Contractors-Backflow, or Fire Suppression Systems Contractors- Residential.

C. Persons performing only maintenance and repair on fire suppression systems.

D. Persons working on residential plumbing appliances, fixtures, appurtenances, or multipurpose residential fire sprinkler systems in one- or two-family dwellings or townhomes.

6.3.6 Installation of underground fire protection system supply lines

6.3.6.1 Underground supply lines installed between the public water main and the fire protection system riser must be installed in accordance with NFPA Standard 24 or NFPA Standard 13, chapter 10, Underground Piping.

6.3.6.2 Underground supply lines ~~shall~~must be installed by registered Fire Suppression Contractors-Underground.

6.3.6.3 The Fire Suppression Systems Inspector may require flushing of the aboveground sprinkler piping if required tests for the underground piping cannot be documented.

6.3.7 Installation of backflow preventers

6.3.7.1 Backflow preventers ~~shall~~must be installed by registered Fire Suppression Contractors-Backflow.

6.3.7.2 For new installations, the backflow preventer may not be installed until Contractor's Material and Test Certificate for Underground Piping has been completed

6.4 Requirements for inspection, testing, and maintenance

Registered Fire Suppression System Contractors must complete and maintain inspection reports, in accordance with the applicable NFPA standard, for each inspection, test, or maintenance performed on any fire suppression system in the State of Colorado.

6.4.1 Such inspection reports ~~shall~~must be maintained for a period of no less than five years or as required by a local AHJ, whichever is greater.

6.4.2 Copies of inspection reports must be submitted to the AHJ unless the contractor is notified in writing that they do not wish to receive such reports.

6.4.3 Records of inspections and inspection reports ~~shall~~must be made available for review at the request of the Division or the local AHJ.

6.4.4 Systems installed, altered, or inspected after January~~July~~ 1st, 201~~5~~6 must have a color coded tag or collar physically placed on the system which identifies the responsible contractor by name, registration number, and contact information (phone number and address). Tags ~~may only be removed by the responsible AHJ or shall~~must not be removed unless replaced by a ~~licensed~~registered suppression contractor ~~or certified inspector~~ who has done a subsequent inspection. Such tag must be placed and remain in the main or primary system control or riser room and must comply with the following parameters:

(A) New Installations and Alterations – ~~Shall~~Must be marked with a White Tag of heavy cardboard or water resistant (plasticized) paper with the word "INSTALL" printed in all caps and in a font no smaller than 24 points on it. Such tag ~~shall~~must be marked to show the date of the final acceptance of the system or alteration and the registration ~~or certification~~ number of the sprinkler fitter ~~or inspector~~ conducting the final acceptance test. These tags ~~shall~~must remain attached to the system for the life of the system.

(B) Systems with No Deficiencies or Impairments - ~~Shall~~Must be marked with a Green Tag of heavy cardboard or water resistant (plasticized) paper with the word "OPERATIONAL" printed in all caps and in a font no smaller than 24 points on it. Such tag ~~shall~~must be marked to show the date of the inspection of the system and the registration or certification number of the fitter or inspector conducting the inspection test. These tags ~~shall~~must remain attached to the system until replaced after the next inspection is conducted.

(C) Systems with a Deficiency - ~~Shall~~Must be marked with a Yellow Tag of heavy cardboard or water resistant (plasticized) paper with the word "DEFICIENCY" printed in all caps and in a font no smaller than 24 points on it. Such tag ~~shall~~must be marked to show the date of the inspection of the system and the registration or certification number of the fitter or inspector conducting the inspection test. These tags ~~shall~~must remain attached to the system until replaced after the deficiency is repaired or the next inspection is conducted.

(D) Systems with an Impairment - ~~Shall~~Must be marked with a RED Tag of heavy cardboard or water resistant (plasticized) paper with the word "IMPAIRMENT" printed in all caps and in a font no smaller than 24 points on it. Such tag ~~shall~~must be marked to show the date of the inspection of the system and the registration or certification number of the fitter or inspector conducting the inspection test. These tags ~~shall~~must remain attached to the system until all impairments have been corrected and the system has been re-inspected and found to be free of any impairments.

6.4.5 Records and reports of inspections, testing and maintenance ~~shall~~must be maintained by the system owner, on the premises of the system, for a period of no less than 5 years. Such records must be made available for review at the request of the Division or the local AHJ.

6.4.6 Records of inspections, testing, or maintenance conducted outside of a full Inspection, Testing, and Maintenance Service ~~shall~~must contain a notice to the system owner or responsible party advising of the limitations of the work conducted in relation to the overall responsibilities of the system owner.

6.4.7 Any contractor, fitter, or inspector who finds a fire suppression system with impairments ~~shall~~must (within 24 hours) provide a copy of the reports or records associated with that finding to the local responding fire department and the appropriate AHJ for the suppression system.

6.5 Complaint reporting

6.5.1 Registered contractors and their employees who identify significant or repeated design or installation deficiencies or other violations of these rules by coworkers, other contractors, or certified suppression system inspectors or plan reviewers ~~shall~~must report them to the Division in accordance with the complaint procedures identified in Section 10.

6.5.2 Contractors reporting such complaints ~~shall~~must provide to the Division copies of submittal documents, inspection reports, photographs, and other evidence supporting the complaint.

6.5.3 Failure to report identified significant or repeated design or installation deficiencies or other violations of these rules may lead to disciplinary action against contractors and/or their employees.

6.1 Every registered fire suppression system contractor must register all plans, along with product data sheets and hydraulic calculations prior to all installation, fabrication, modification, or alteration project of any fire suppression system in the State of Colorado. The plans and hydraulic calculations must bear the signature of a P.E. or NICET level III or above. This signature attests to the fact that the plans have been reviewed and meet the intent of the standard. The contractor must file the required documents for registration with the local authority that employs a certified fire suppression system inspector.

5.2 If the local jurisdiction does not have a certified fire suppression inspector, the required documents for registration shall be filed with the Colorado Division of Fire Safety for review. When submitting to the Division, a minimum of three sets of plans and hydraulic calculations shall be provided. Once reviewed and acted on by the Division, one full set of plans must be sent to the local jurisdiction by the contractor.

5.3 To ensure that only qualified inspectors are conducting plan reviews and inspections and to prevent jeopardizing contractor registration, the contractor shall determine that the inspector is certified by: (a) verify on the Colorado Division of Fire Safety's web site that an inspector holds a current and valid certification. (b) requesting the inspector's certification number; or (c) contacting the Division of Fire Safety to confirm that the inspector holds current and valid certification.

5.4 Every registered fire suppression system contractor must complete and maintain inspection reports, in accordance with the applicable NFPA standard, for each repair, maintenance, and inspection performed on any fire suppression system in the State of Colorado.

5.4.1 Such inspection reports shall be maintained for a period of no less than three years. Copies of the inspection report must be submitted to the local authority having jurisdiction, unless the contractor is notified in writing by the local authority that they do not wish to receive such reports.

5.4.2 Records of inspection and inspection reports shall be made available for review by the Administrator.

5.5 Fire Suppression System Installations.

5.5.1 The above ground sprinkler piping must be visible and accessible for inspection by a certified fire suppression systems inspector, and approved prior to occupancy.

5.5.2 A "Contractor's Material and Test Certificate for Aboveground Piping" must be completed with all above test results documented and copies provided to the owner and certified fire suppression system inspector by the contractor.

5.5.3 Fire Suppression Contractors - Multipurpose shall provide, or demonstrate to a Certified Suppression Inspector, flow verification tests, commonly referred to as a bucket test, to confirm that the system's performance meets or exceeds the flow requirements as indicated by approved hydraulic calculations, manufacturer's specifications, or pretested limitations

5.6 Small Projects

5.6.1 Small projects are defined as any work involving the addition or relocation of less than 20 sprinkler heads. Completed work cannot have an adverse affect on the integrity of the existing fire protection system, including the hydraulic design.

5.6.2 A scale drawing of the proposed project on an 8 1/2 x 11 inch paper, including product data sheets, calculations, and all information required by the applicable NFPA standard may, upon request, be permitted for submittal to the certified fire suppression inspector in lieu of a full set of blue prints. The certified fire suppression system inspector has the right to require additional information as may be necessary to fully evaluate the project.

5.6.3 A signed letter on the registered contractor's letterhead explaining the scope of work, start and completion dates, and a statement that tenant finish, remodel, or additions do not affect the hydraulic demand design or integrity of the existing fire protection system is also required for submittal to the administrator or the local certified fire suppression inspector. The authority having jurisdiction may require hydraulic calculations.

5.6.4 If it is likely that the hydraulic design or integrity of the existing fire protection system has been affected by the scope of work, or if the owner, contractor, or authority having jurisdiction has concerns about the system integrity, a NICET Level III or above or a professional engineer review shall be required.

5.7 Underground Piping used for Fire Protection Supply Lines

5.7.1 The underground supply line installed between the public water main and the fire protection system riser must be installed in accordance with NFPA Standard 24 or NFPA 13 chapter 10, Private Fire Service Mains and their appurtenances.

5.7.2 All underground supply lines shall be installed by registered underground contractors and shall be inspected by qualified inspectors. The hydrostatic and flush tests shall be witnessed and test papers signed by the local Authority Having Jurisdiction or the general contractor if approved by the local authority.

5.7.3 A copy of the "Contractor's Material and Test Certificate for Underground Piping" must be completed and provided to the fire sprinkler contractor, certified fire suppression system inspector and the owner by the installing contractor prior to connection of the fire sprinkler riser.

~~5.7.4 The Authority Having Jurisdiction may require flushing of the aboveground sprinkler piping if approved documentation of the required tests for the underground piping cannot be provided.~~

~~5.8 Additional Conditions~~

~~5.8.1 Flow tests on water supply systems must be less than one year old, unless approved by the certified fire suppression system inspector having jurisdiction.~~

~~5.8.2 When calculating water supply requirements for new installations, deduct ten (10) percent to a maximum of (10) psi from the static and residual pressure. Show the actual flow and reduction on hydraulic calculation sheets.~~

~~Exemption. 13D (One and two family dwellings) are exempt from 5.8.2 unless required by the local authority.~~

~~5.8.3 Design of residential multipurpose sprinkler systems shall account for all pressure losses through installed water meters and water treatment equipment.~~

~~5.9 Exemptions. The following projects are exempted from plan submittal, inspection, and approval requirements:~~

~~5.9.1 Pre-engineered range hoods and duct extinguishing systems.~~

~~5.9.2 Any work described in this Section 5 that is conducted at any facility owned and operated by a mining company.~~

SECTION 7~~6~~
FIRE SUPPRESSION SYSTEM INSPECTOR RESPONSIBILITIES

This Section identifies the responsibilities of Fire Suppression System Inspectors and Plan Reviewers and the jurisdictions which employ them.

7.1 Credentials

7.1.1 Certified Fire Suppression Inspectors and Plan Reviewers ~~shall~~must provide their certification number on all suppression system plan reviews, permits, and inspection reports.

7.1.2 To ensure that only qualified contractors are performing work on sprinkler systems, Plan Reviewers ~~shall~~must require the registration number of any contractor submitting plans for review.

7.1.3 To ensure that only qualified Sprinkler Fitters are installing or modifying sprinkler systems, inspectors ~~shall~~must require the registration number of the journeyman overseeing a project, prior to beginning an inspection.

7.1.4 Credentials may be verified on the Division's website or by mail or phone (See Section 13).

7.2 Requirements for plan review

Plan Reviewers ~~shall~~must verify that submitted documents include all information necessary to ensure that plans are designed in accordance with the appropriate standards.

7.2.1 Plan Reviewers may ask for any additional information beyond that required by adopted standards when necessary to verify the effectiveness and appropriateness of a proposed sprinkler design.

7.3 Requirements for performing inspections

Inspectors ~~shall~~must verify that work is performed in a workmanlike manner and in accordance with the approved plans.

7.4 Record keeping

Municipalities, counties, fire protection districts, and other state or local authorities employing certified Fire Suppression Systems Inspectors must maintain records of all plan reviews and inspections conducted by each inspector and plan reviewer during their three year certification periods and for at least three years after a project is completed, or in accordance with other applicable regulations or statutes, whichever is longer. Said records ~~shall~~must be made available for review by the Division, upon request.

7.5 Complaint reporting

7.5.1 Certified Fire Suppression Systems Inspectors or Plan Reviewers who identify significant or repeated design or installation deficiencies or other violations of these rules by contractors, Sprinkler Fitters, coworkers, or other certified Fire Suppression Systems Inspectors or Plan Reviewers ~~shall~~must report them to the Division in accordance with the complaint procedures identified in Section 10.

7.5.2 Certified Fire Suppression Systems Inspectors or Plan Reviewers reporting such complaints ~~shall~~must provide to the Division copies of submittal documents, inspection reports, photographs, or other evidence supporting the complaint.

7.5.3 Failure to report significant or repeated design or installation deficiencies or other violations of these rules may lead to disciplinary action against the certified Fire Suppression Systems Inspectors or Plan Reviewer.

7.5.4 Fire Suppression Systems Inspectors or Plan Reviewers who are subject to complaints ~~shall~~must not retaliate in any way against a complainant. A finding of retaliation may lead to loss of certification.

SECTION 8
SPRINKLER FITTER RESPONSIBILITIES

This Section identifies the responsibilities of sprinkler fitters

8.1 Credentials

8.1.1 Registered Sprinkler Fitters ~~shall~~must keep a copy of their State issued registration with them when performing work on a suppression system and ~~shall~~must present it to a certified inspector or AHJ at their request.

8.1.2 Apprentices ~~shall~~must keep a copy of their State issued registration with them when performing work on a suppression system and ~~shall~~must present it to a certified inspector or AHJ at their request.

8.1.3 To ensure that only qualified Fire Suppression Systems Inspectors are performing plan reviews or inspections of fire suppression systems, sprinkler fitters may ask for their certification number.

8.1.4 Credentials may be verified on the Division's website or by mail or phone (See Section 13).

8.2 Requirements for installation, modification, and repair

8.2.1 A registered Sprinkler Fitter ~~shall~~will be responsible to perform his or her duties in a workmanlike manner.

8.2.2 A registered Sprinkler Fitter ~~shall~~must not leave a fire suppression system out of service in an occupied building without consulting with and meeting the fire watch requirements of the authority having jurisdiction.

8.2.3 Sprinkler Fitters ~~shall~~will be responsible for the work of any apprentices under their authority. A Sprinkler Fitter may supervise no more than three apprentices at any one time. A Sprinkler Fitter ~~shall~~must not leave apprentices unsupervised and ~~shall~~must be immediately available on site.

8.3 Complaint reporting

8.3.1 Registered Sprinkler Fitters who identify significant or repeated design or installation deficiencies or other violations of these rules by contractors, other sprinkler fitters, coworkers, or certified Fire Suppression Systems Inspectors or

Plan Reviewers ~~shall~~must report them to the Division in accordance with the complaint procedures identified in Section 10.

8.5.2 Registered Sprinkler Fitters reporting such complaints ~~shall~~must provide to the Division copies of submittal documents, inspection reports, photographs, or other evidence supporting the complaint.

8.5.3 Failure to report significant or repeated design or installation deficiencies or other violations of these rules may lead to disciplinary action against the registered sprinkler fitter.

SECTION 9
CODES AND STANDARDS ADOPTED

~~6.1 All publications, standards or rules adopted and incorporated by reference in these rules are on file and available for public inspection during normal business hours by contacting the Colorado Division of Fire Safety, 9195 East Mineral Avenue, Centennial, CO 80112. All publications, standards or rules adopted and incorporated by reference in these rules may also be examined at any state publications depository library. This rule does not include later amendments to or editions of any materials incorporated by reference.~~

~~6.2 Questions, clarification, or interpretation of these rules should be addressed in writing to: Fire Suppression Program Administrator, Colorado Division of Fire Safety, 9195 East Mineral Avenue, Suite 234, Centennial, CO 80112.~~

9~~6~~.1~~3~~ The following codes ~~and standards, including applicable addenda and appendices,~~ are adopted by the ~~Administrator~~ Division for the design, installation, and maintenance of fire suppression systems within the State of Colorado.

~~Fire Suppression Program:~~

~~6.3~~9.1.1 International Building Code, ~~2006 e~~2015 Edition, First Printing: May 2014 (Copyright 2014 by International Code Council, Inc. Washington, D.C.).~~This code is published by the International Code Council (ICC), 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041-3405. Copies of the incorporated material can be purchased from the **ICC** at the address shown above.~~

~~6.3.4~~9.1.2 International Fire Code, ~~2006 e~~2015 Edition, First Printing: May 2014 (Copyright 2014 by the International Code Council, Inc. Washington, D.C.).
~~This code is published by the International Code Council (ICC), 5203 Leesburg Pike Suite 600, Falls Church, VA 22041-3405 Copies of the incorporated material can be purchased from the ICC at the address shown above.~~

~~6.3.5~~9.1.3 International Residential Code, ~~2006 e~~2015 Edition, First Printing: May 2014 (Copyright 2014 by the International Code Council, Inc Washington, D.C.)

This code is published by the International Code Council (ICC), 5203 Leesburg Pike Suite 600, Falls Church, VA 22041-3405. Copies of the incorporated material can be purchased from the ICC at the address shown above.

9.1.4 International Wildland-Urban Interface Code, 2015 Edition, First Printing: May 2014 (Copyright 2014 by International Code Council, Inc.).

9.1.5 NFPA 101, Life Safety Code, 2012 Edition, First Printing: September 2011 (Copyright 2011 by National Fire Protection Association).

~~6.3.6~~9.2 ~~National Fire Protection S~~The following standards are adopted by the Division for the design, installation, and maintenance of fire suppression systems within the State of Colorado.

~~NFPA 1 Uniform Fire Code, 2006 edition~~

NFPA 4 Standard for Integrated Fire Protection and Life Safety System Testing 2015 Edition (Copyright 2015 by National Fire Protection Association Inc.).

NFPA 11 Standard for Low, Medium, and High Expansion Foam ~~and Combined Agent Systems, 2005~~ 2010 eEdition (Copyright 2009 by National Fire Protection Association Inc.).

NFPA 12 Standard for the Installation of Carbon Dioxide Extinguishing Systems ~~2005~~ 2011 E~~e~~dition (Copyright 2010 by National Fire Protection Association Inc.).

NFPA 12A Standard for the Installation of Halon 1301 Fire Extinguishing Systems, ~~2004~~ 2009 ~~edition~~Edition (Copyright 2008 by National Fire Protection Association Inc.).

NFPA 13 Standard for the Installation of Sprinkler Systems, ~~including all standards referenced in Chapter 10 and considered part of the requirements of this adoption, 2002 edition.~~ 2013 Edition, (Copyright 2012 by National Fire Protection Association Inc.).

NFPA 13D Installation of Sprinkler Systems in One and Two Family Dwellings and ~~Mobile~~ Manufactured Homes, ~~2002~~ 2013 ~~edition~~Edition (Copyright 2012 by National Fire Protection Association Inc.).

NFPA 13R Standard for the Installation of Sprinkler Systems

in Low-Rise Residential Occupancies ~~up to four stories in height~~, ~~2002~~ 2013 ~~edition~~Edition (Copyright 2012 by National Fire Protection Association Inc.).\

NFPA 14 Standard for the Installation of Standpipe and Hose Systems, ~~2003~~ 2013 E~~e~~dition (Copyright 2013 by National Fire Protection Association Inc.).

NFPA 15 Standard for Water Spray Fixed Systems for Fire Protection, ~~2001 e~~2012 Edition (Copyright 2011 by National Fire Protection Association Inc.).

NFPA 16 Standard for the Installation of ~~Deluge~~ Foam-Water Sprinkler and Foam-Water Spray Systems, ~~2003 e~~2011 Edition (Copyright 2010 by National Fire Protection Association Inc.).

NFPA 17 Standard for Dry Chemical Extinguishing Systems, ~~2002 e~~2013 Edition (Copyright 2013 by National Fire Protection Association Inc.).

NFPA 17A Standard for ~~Wet Chemical Extinguishing Systems~~Wetting Agents, ~~2002 e~~2011 Edition (Copyright 2010 by National Fire Protection Association Inc.).

NFPA 20 ~~Centrifugal Fire~~Standard for the Installation of Stationary Pumps for Fire Protection, ~~2003 e~~2013 Edition (Copyright 2012 by National Fire Protection Association Inc.).

NFPA 22 Standard for Water Tanks for Private Fire Protection, ~~2003 e~~2013 Edition (Copyright 2012 by National Fire Protection Association Inc.)**.**

NFPA 24 Standard for the Installation of Private Fire Service Mains and Their Appurtenances, ~~2002 e~~2013 Edition (Copyright 2012 by National Fire Protection Association Inc.).

NFPA 25 Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems, ~~2002 e~~2014 Edition (Copyright 2013 by National Fire Protection Association Inc.).

~~NFPA 69 Standard on Explosion Prevention Systems 2014 Edition (Copyright 2014 by National Fire Protection Association Inc.).~~

NFPA 72 National Fire Alarm and Signaling Code, ~~2002 e~~2013 Edition (Copyright 2012 by National Fire Protection Association Inc.).

NFPA 409 Standard on Aircraft Hangars, ~~2004 e~~2011 Edition (Copyright 2010 by National Fire Protection Association Inc.).

NFPA 418 Standard for Heliports, 2011 Edition (Copyright 2010 by National Fire Protection Association Inc.).

NFPA 423 Standard for Construction and Protection of Aircraft Engine Test Facilities, ~~2004 e~~2010 Edition (Copyright 2009 by National Fire Protection Association Inc.).

NFPA 750 Standard on Water Mist Fire Protection Systems, ~~2003 e~~2015 Edition (Copyright 2014 by National Fire Protection Association Inc.).

NFPA 1142 Standard on Water Supplies for Suburban and Rural Firefighting, 2012 Edition (Copyright 2011 by National Fire Protection Association Inc.).

NFPA 2001 Standard on Clean ~~Air~~ Agent Fire Extinguishing Systems, ~~2004 e~~2012 Edition~~.~~ (Copyright 2011 by National Fire Protection Association Inc.)

NFPA 2010 Standard for Fixed Aerosol Fire-Extinguishing Systems, 2015 Edition (Copyright 2014 by National Fire Protection Association Inc.)

~~NFPA 5000 Building Construction and Safety Code, 2006 edition.~~

~~These standards are published by the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, Telephone: (800) 344-3555. Copies of the incorporated material can be purchased from the National Fire Protection Association at the address shown above.~~

9.3 The Division ~~shall~~will maintain copies of the complete texts of the adopted codes and standards, which are available for public inspection during regular business hours. Interested parties may inspect the referenced incorporated materials and/or obtain copies of the adopted codes for a reasonable fee by contacting the Fire and Life Safety Section Chief at the Division, 690 Kipling St, Lakewood, CO, and/or The State Depository Libraries. Copies of the adopted codes and standards are available from the organization originally issuing the codes and standards: the International Code Council, Inc., through the International Code Council Regional Office Bookstores, reached by calling 888-ICC-SAFE or on the web at www.iccsafe.org, and the National Fire Protection Association, reached by calling 800-344-3555 or on the web at www.nfpa.org.

9.4 In the event that a new edition of a code or standard is adopted, the code or standard

current at the time of permit application ~~shall~~will remain in effect through the work authorized by the permit.

9.5 This rule does not include later amendments or editions of the incorporated material

Exemption: The Director ~~shall~~ has~~ve~~ the authority to adopt by policy Tentative Interim Amendments (TIAs) issued by the promulgating body of the national code or standard that are determined to be necessary to ensure public health, safety, and welfare.

~~6.4~~9.6 In the case of ~~any~~ conflicting requirements between any code ~~and~~ or standard adopted ~~by the Administrator~~Division, the ~~Administrator~~Division, in ~~his~~ its sole discretion, ~~shall~~ will determine which provisions ~~shall~~ will apply.

9.7 Municipalities, counties, fire protection districts and other units of local government having the authority to do so, may adopt codes, standards, ordinances and/or resolutions governing the design and installation of fire ~~protection~~ suppression systems that may be different than those adopted by the ~~Administrator~~Division.

~~6.5~~9.7.1 Municipalities, counties, fire protection districts and other local authorities employing certified fire suppression inspectors may enforce locally adopted codes, standards ordinances and/or resolutions governing the design and installation of fire ~~protection~~ suppression systems, to the extent permitted by the adopting ordinance or resolution.

~~6.5~~9.7.2 Conflicts between the codes and standards adopted by the Administrator and those adopted by a local government ~~shall~~ will be resolved in the following manner:

A. ~~A.~~ In cases where the local authority having jurisdiction employs certified fire suppression systems inspectors and plan reviewers, the local government requirements ~~shall~~ will ~~prevail~~apply.

~~A.~~B. In cases where the local authority having jurisdiction employs certified fire suppression inspectors but the Division conducts plan reviews, the Division's adopted codes and standards ~~shall~~will apply.

~~B.~~C. In cases where the local authority having jurisdiction does not employ certified fire suppression systems inspectors or plan reviewers ~~and~~ the Division's ~~of Fire Safety conducts plan reviews and inspections, the more restrictive requirements shall prevail~~adopted codes and standards ~~shall~~will apply.

SECTION ~~7~~10
COMPLAINTS

This Section concerns the reporting, investigation, and resolution of complaints alleging violation of any provision of 24-33.5-1206 through 1206.7 C.R.S or the rules of this program.

~~This section concerns the receiving, investigating and acting upon complaints against any person who violates the provisions of Colorado Revised Statutes (C.R.S.) 24-33.5-1206.5 through 1206.6 or any rule adopted by the Administrator.~~

10.1 Complaints alleging violation of any provision of C.R.S. 24-33.5-1206.1~~5~~ through 1206.7~~6~~, or any rule adopted by the ~~Administrator~~ Division ~~shall~~ must be filed with the ~~Colorado~~ Division's ~~of Fire Safety,~~ Fire ~~Suppression Program Administrator~~& Life Safety Section Chief. ~~A complaint form may be accessed on the Division of Fire Safety's website or the complaint may be submitted to the Colorado Division of Fire Safety at 9195 East Mineral Avenue, Suite 234, Centennial, CO 80112.~~

10.1.1 The Division may act on anonymous complaints or those made by complainants who desire to remain anonymous. However, individuals submitting complaints should be aware that such complaints are public records and may be available to the public for inspection in accordance with the Colorado Public Records Act 24-72-201 C.R.S. et seq.

10.1.2 Individuals or companies certified or registered through the Division in accordance with Sections 3, 4, and 5 of these rules are required to report significant or repeated design or installation deficiencies, other violations of any provision of 24-33.5-1206.1 through 1206.7 C.R.S., or the rules of this program

10.1~~7~~.2 The ~~Administrator~~ Fire & Life Safety Section (F&LSS) Chief will investigate or cause to be investigated the information contained in the complaint. If ~~proper~~ evidence can be found to substantiate that a violation ~~of C.R.S. 24-33.5-1206.5 through 1206.6 or current rules have~~has occurred, the ~~Administrator~~ F&LSS Chief will proceed pursuant to ~~C.R.S. 24-33.5-1204.5(1)(e).~~10.2 through 10.8.

10.1.3 If the investigation identifies evidence of fraud or other criminal activity, a case will be referred to the law enforcement agency(ies) having jurisdiction. Referral does not prevent the Division from pursuing action under these rules.

10.1.4 Should the ~~Division~~Director ~~staff or the Administrator~~ determine that it is necessary to conduct a hearing, the Division ~~of Fire Safety~~ will utilize the services of the Colorado Division of Administrative Hearings to conduct a hearing in accordance with the Colorado Administrative Procedures Act (~~C.R.S.~~ 24-1-101 et seq. C.R.S.).

10.2 Penalties

~~Penalties and fines for violating any provision of C.R.S. 24-33.5-1206.5 through 1206.6 or these rules.~~

~~7.4.1 In addition to any other civil or criminal penalties that may be prescribed by a court of competent jurisdiction, Division staff or the Administrator~~ The F&LSS Chief may assess a penalty and/or fine for any conduct determined, after investigation, to constitute a violation of these rules~~, that in the opinion of Division staff or the Administrator does not constitute an imminent threat to public health, safety, or welfare.~~

10.2.1 Such penalties and fines ~~shall~~will be in addition to any other civil or criminal penalties that may be prescribed by a court of competent jurisdiction.

10.2.2 Nothing in these rules should be construed to understand that penalties must follow progressive discipline.

10.3 Warnings

A Warning may be issued to individuals and/or companies for a single, substantiated, violation of these rules which, in the opinion of the F&LSS Chief, does not rise to the level of a significant violation.

10.3.1 Examples of violations which may lead to a warning (list is not exclusive):

1) Failure to provide registration or certification number on documents as required in Sections 6 through 8;
2) Failure of a Sprinkler Fitter to maintain a copy of his or her registration on the job site;
3) Operating with an expired certification or registration (within the grace period).

10.3.2 Warnings will be delivered by e-mail to the address provided on the certification or registration application.

10.3.3 Warnings issued to Sprinkler Fitters or Fire Suppression Systems Inspectors will be copied to the registered contractor or local AHJ for which they work.

10.3.4 E-mailed warnings will be sent with a delivery receipt requested.

10.4 Letters of Admonition

A Letter of Admonition will be issued for a single, substantiated violation which, in the opinion of the F&LSS Chief, constitutes a significant violation but which does not constitute a threat to public health, safety, or welfare. Letters of Admonition may also be issued to individuals and/or companies receiving multiple warnings during any twelve month period.

10.4.1 Examples of violations which may lead to a letter of admonishment (list is not exclusive):

1) Receiving more than one warning during any twelve month period;
2) Failure to report significant or repeated design or installation deficiencies as required by 6.5, 7.5, or 8.3;
3) Operating with an expired certification or registration (outside of the grace period).

10.4.2 Nothing ~~shall~~will be construed to require subsequent violations be related to the nature of the previous violation.

10.4.3 Letters of Admonition will be delivered by certified mail to the address provided on the certification or registration application.

10.4.4 Letters of Admonition issued to sprinkler fitters or certified inspectors will be copied to the registered contractor or local AHJ for which they work.

10.5 Suspensions

A registration or certification may be suspended for a single, substantiated violation of these rules which, in the opinion of the F&LSS Chief, constitutes a serious violation but which does not constitute a serious threat to public health, safety, and welfare. Suspensions will also be issued to individuals and/or companies for repeated violations as indicated in 10.3 and 10.4.

10.5.1 Examples of violations which might lead to suspension (list is not exclusive):

1) Receiving a warning subsequent to receiving of a Letter of Admonition during the prior twelve month period;
2) Failure or refusal to stop work or leave a job site upon request of the certified inspector;
3) Failure to notify the Division of any changes that may affect the person's current registration or certification status;
4) Employment of non-registered sprinkler fitters by a registered contractor;
5) Expiration of a required, qualifying document or examination during the registration or certification period.

10.5.2 Nothing ~~shall~~will be construed to require subsequent violations to be related to the nature of previous violations.

10.5.3 Notices of suspension will be issued as Letters of Admonition in accordance with 10.4.

10.5.4 Suspensions ~~shall~~will be for a period of no more than 1 month or the remainder of the current registration or certification period, whichever is less.

10.5.5 Any violation which, in the opinion of the F&LSS Chief, constitutes a serious threat to public health, safety, or welfare ~~shall~~will result in immediate suspension of a registration or certification pending a revocation hearing pursuant to 10.6 and 10.8.

10.6 Revocations

A registration or certification may be revoked for a single, substantiated violation of these rules which, in the opinion of the Director, constitutes a serious threat to public health, safety, and welfare. Registrations or certifications may also be revoked for repeated violations of 10.3 through 10.5.

10.6.1 Examples of violations which might lead to revocation (list is not exclusive);

1) Receiving a Letter of Admonition subsequent to a suspension within the prior twelve month period.
2) Fraud or material deception in obtaining or renewing a registration or certification;
3) Professional incompetence as manifested by poor, faulty, or dangerous workmanship;
4) Engaging in conduct that is likely to deceive, defraud, or harm the public in the course of professional services or activities;
5) Negligently performing any services regulated by the Division;
6) Retaliation by a certified inspector against a complainant;
7) Using another individual's or company's credentials to obtain or perform work regulated by these rules.

10.6.2 Nothing ~~shall~~will be construed to require subsequent violations to be related to the nature of previous violations.

10.6.3 Notices of revocation will be issued as Letters of Admonition in accordance with 10.4.

10.6.4 Revocations ~~shall~~will be for a period of no less than the remainder of the current registration or certification period or one (1) year, whichever is greater.

10.6.5 All revocations will be subject to immediate suspension of a registration or certification pending a revocation hearing pursuant to 10.8.

10.7 Fines

In addition to the penalties identified 10.4 through 10.6, the F&LSS Chief may assess a fine for any conduct determined to constitute a violation of these rules. The fines ~~shall~~will be as follows:

1) A letter of admonition or suspension may be subject to a fine of not less than $100 and not more than $1,000.

2) A revocation ~~shall~~will be subject to a fine of not less than $1,000 and not more than $10,000.
3) Any subsequent violation of similar magnitude ~~shall~~will be assessed a fine of not less than $1,000 and not more than $10,000 and ~~shall~~will be subject to immediate suspension pursuant to a revocation hearing.

10.7.1 All fines collected pursuant to this rule ~~shall~~will be deposited in the fire suppression cash fund.

10.8 Hearings

~~.~~10.8.1 Authority to call hearings

10.8.1.1 The Director, at his or her discretion, may conduct a hearing to determine the facts of a complaint and to determine the appropriate penalty for a violation.

10.8.1.2 A hearing ~~shall~~will be conducted whenever a registration or certification is subject to revocation.

10.8.1.3 Any contractor, sprinkler fitter, or inspector who feels aggrieved by the decision, order, or actions of the Division in accordance with this Section may request a hearing.

10.8.2 All hearings ~~shall~~will be in accordance with the Colorado Administrative Procedure~~s~~ Act (C.R.S. 24-1-101 et seq.).

10.8.3 The decision, order, or actions of the Director following the hearing will be considered the final agency action.

10.8.4 Any contractor, sprinkler fitter, or inspector who feels aggrieved by the decision, order or actions of the Director following final agency action may seek judicial relief pursuant to the provisions of 24-4-106 C.R.S.

~~7.4.8 Any contractor who feels aggrieved by the decision, order or actions of Division staff or the Administrator may request a hearing in accordance with the Colorado Administrative Procedures Act (C.R.S. 24-1-101 et seq.).~~

~~7.4.9 Any contractor who feels aggrieved by the decision, order or actions of the Administrator following final agency action may seek judicial relief pursuant to the provisions of C.R.S. 24-4-106.~~

SECTION ~~8~~11
FEES AND CHARGES ESTABLISHED

118.1 ~~The Colorado Division of Fire Safety will charge the following fees for s~~Services other than fire suppression system plan review and inspection fees:

11.1.1 Annual Registration of Fire Suppression System Contractors $100~~m Contractors……$55~~

11.1.2 Sprinkler fitter – new application $75

11.1.3 Sprinkler fitter – renewal application $50

119.1.42 Replacement of lost or damaged registration or certification $ ~~registration & Certification……...$5~~10

~~8.1.3 Plan Registration Form Submittal (per submittal)……$10~~

~~9.1.4 Plans and Hydraulic Calculations Review….$25.00/hour (One hour minimum)~~

~~119.1.55 Plan reviews. Minimum fee, paid on submittal. $300 (covers first 3 hours work)~~

11.1.56 ~~Plan reviews, job site inspections, testing, or t~~Technical assistance to other agencies including travek~~l~~ to and from job site $100/hr

~~Advanced Technical Support services:~~
~~Inspection or plan review (One hour minimum)……$35/hour~~

119.1.677 Certification or Renewal of Fire Suppression System Inspectors:
Document review…… $~~15~~30

Reciprocity of equivalent ICC or NFPA certifications $10

11.1.7~~88~~ Late renewal fee $25

11.1.8~~9~~ Examination (or review of reciprocal exam) $30

119.1.9 ~~10~~Compliance inspection fee per~~7 Compliance Inspection Fee per~~ hotel or motel fire alarm and fire suppression system ~~Hotel or Motel Fire Alarm and Fire Suppression System……..……~~ $~~$~~105~~0~~

11.2 **Fire Suppression System plan review and inspection fees:**

~~11.2.1 The p~~Plan review, construction permit, and inspection fees are calculated based on the Total Project Valuation.

A) The building inspection component of this fee in 11.2.4(A) includes one inspection per required signature line on the issued permit and inspection card. In the event that additional inspections by the Division are necessary or requested, additional fees may be assessed as outlined in 11.2.4.

B) The Fire and Life Safety inspection component of this fee in 11.2.4(C) includes one inspection per required signature line on the issued permit and inspection card. In the event that additional inspections by the Division are necessary or requested, additional fees may be assessed as outlined in 11.2.4.

C) Division inspection fees do not include costs associated with inspections conducted by local Authorities Having Jurisdiction or Third-Party Inspectors.

D) If the submitted Total Project Valuation appears to be below market value for the project, the Division reserves the right to request documentation from the permitee to verify the Total Project Valuation. The permitee has the right to mark documents submitted to verify the Total Project Valuation as proprietary information.

11.2.2 The Division will review the fund balance periodically and may reduce or increase the amount of the fee, if necessary, pursuant to section 24-75-402 (3) and 24-75-402 (4), C.R.S. Code of Colorado Regulations 20

11.2.3 A fee calculator posted on the Division website enables determination of total fees (plan review and permit fees) prior to submittal of a project. Additional inspections, beyond the included inspections, will be assessed a fee of $400.00 per four-hour block of inspector time including travel. All applications received on or after July 1st, 2015 are subject to the fee structure in these rules. All prior fee structures are restructured pursuant to these rules.

A) Fees for Fire Suppression plan reviews by the Division:

a. Fees for projects with a Total Project Valuation of $5,000.00 or less will be subject to a flat fee of $800.00.

b. Fees for projects with a Total Project Valuation of greater than $5,000.00 will be subject to a base fee of $800.00 plus a fee equal to .0006 times the Total Project Valuation.

11.2.4 Half of the fees must be submitted prior to commencement of plan review and the remaining half must be submitted prior to permit issuance. Inspections will not be performed until the required fee has been paid. Additional inspection fees must be submitted prior to issuance of any associated Certificate of Compliance or completion of the permit.

11.2.5 The Division may assess a $~~4~~400 fee per four-hour block of inspector time including travel for each inspection or re-inspection when such portion of work for which the inspection is called is not completed or when corrections previously called for are not made. Upon request of the permitee, one re-inspection fee per project may be waived at the discretion of the Division. This re-inspection fee is intended to control the practice of calling for inspections before the work is ready for such inspection or re-inspection.

11.2.6 The Division may assess an additional off-hours inspection fee of $200 for inspections requested outside of normal business hours.

A) Normal inspection hours are Monday through Friday between 8:00 am and 5:00 pm.

B) Off-hours inspections are scheduled on an "as-available" basis. The Division is not obligated to provide inspections outside of normal operating hours if an inspector is not available. ~~11.~~

11~~8~~.7~~2~~ The above fees and charges apply only for ~~Colorado~~ Division ~~of Fire Safety~~ services. Local jurisdictions having certified Fire Suppression Systems Inspectors ~~fire suppression system inspectors~~ may establish their own permit ~~fees~~, plan review and inspection fees, and other charges.

~~* Note: Job site inspections and testing will be based on actual time on site, with one hour minimum charge. Travel to and from job site will be based on the mileage formula of 40 miles of travel equals one hour.~~

SECTION ~~9~~12
SEVERABILITY

~~9~~12.1 If any provision of these rules and regulations or the application thereof to any person or circumstance is held invalid for any reason, the invalidity shall not affect the other provisions of these rules and regulations which can be given effect without the invalid provisions. To this end, all provisions of these rules and regulations are declared to be severable.

SECTION ~~10~~13
INQUIRIES

~~10~~13.1 Questions, clarification, or interpretation of these rules should be addressed in writing to: Fire ~~Suppression Program Administrator~~& Life Safety Section Chief, Colorado Division of Fire ~~Safety~~Prevention and Control, ~~9195 East Mineral Avenue Suite 234, Centennial, CO 80112~~700 Kipling St, Suite 4100, Denver, CO 80215. Telephone number: (~~720~~303) ~~852-6735~~239-4100.

Notice of Proposed Rulemaking

Tracking number

2015-00311

Department

1507 - Department of Public Safety

Agency

1507 - Division of Fire Prevention and Control

CCR number

8 CCR 1507-54

Rule title

REGISTRATION OF SPRINKLER FITTERS AND INSPECTORS OF MULTIPURPOSE RESIDENTIAL FIRE SPRINKLER SYSTEMS IN ONE AND TWO FAMILY DWELLINGS AND TOWNHOUSES

Rulemaking Hearing

Date

07/08/2015

Time

01:00 PM

Location

690 Kipling St., Lakewood, CO 1st Floor Conference Room

Subjects and issues involved

Repeal of Rule

Statutory authority

24-33.5-1203.5, C.R.S.,

Contact information

Name

Jake Miller

Title

Policy Analyst

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DEPARTMENT OF PUBLIC SAFETY

Division of Fire Prevention and Control

REGISTRATION OF SPRINKLER FITTERS AND INSPECTORS OF MULTIPURPOSE RESIDENTIAL FIRE SPRINKLER SYSTEMS IN ONE AND TWO FAMILY DWELLINGS AND TOWNHOUSES

8 CCR 1507-54

The Agency is proposing to repeal this rule.

~~**FIT1 Authority to Promulgate Regulations**~~

~~A. The Colorado Division of Fire Safety Director is mandated to promulgate rules and regulations pursuant to 24-33.5-1203.5, C.R.S., regarding the registration of Sprinkler Fitters and certification of inspectors of multipurpose residential fire sprinkler systems in one and two family dwellings and townhouses.~~

~~**FIT 2 Definitions**~~

~~A. The definitions provided in sections 24-33.5-1202, C.R.S. and 12-58-102, C.R.S. shall apply to these rules and regulations.~~

~~B. The following definitions are set forth herein to provide context to these rules and regulations:~~

~~1. "Sprinkler fitter" means a person other than an apprentice who is registered with the administrator and who installs fire suppression systems. "sprinkler fitter" does not include a person who performs maintenance and repair on fire suppression systems as a part of his or her employment. a sprinkler fitter does not include a person who performs work exclusively on cross-connection control devices or a person who performs work exclusively on an underground system. "sprinkler fitter" does not include a person performing work on his or her own home.~~

~~2. "Fire suppression system" means an assembly of any or all of the following: piping valves, conduits, dispersal openings, sprinkler heads, orifices, and other similar devices that convey extinguishing agents for the purpose of controlling, confining, or extinguishing fire, with the exception of mulitpurpose residential fire sprinkler systems in one- and two-family dwellings and townhouses that are part of the potable water supply, pre-engineered range hoods, duct systems, and portable fire extinguishers.~~

~~C. In addition to the above, the following will also apply:~~

~~1. "Division" or "The Division" means State of Colorado Division of Fire Safety.~~

~~2. "Administrator" means the Director, or his designee, of the Division of Fire Safety.~~

~~**FIT3 Purpose**~~

A. This regulation shall govern the establishment and enforcement of minimum standards for sprinkler fitters and inspectors of multipurpose residential fire sprinkler systems in one and two family dwellings and townhouses.

B. The purpose is to establish minimum levels of training and skill that demonstrates competencies in each program.

FIT4 Sprinkler Fitters Scope

FIT4.1 Registration Required

A. No person shall act, assume to act, or advertise as a sprinkler fitter who is not currently registered with the Division.

B. Fire suppression contractors registered with the Division, pursuant to 24-33.5-1206.1, C. R. S., shall not allow persons to install a fire suppression system who is not registered with the Division as a fire sprinkler fitter.

1. Persons who are enrolled in a sprinkler fitter apprenticeship program and are under the direct supervision and immediate presence of a registered sprinkler fitter may perform work on a fire suppression system.

FIT4.2 Registration Not Required

A. Registration under the sprinkler fitter program is not required for the following persons or situations:

1. A person who only performs maintenance and repair on fire suppression systems;

2. A person who performs work exclusively on cross-connection control devices;

3. A person who works exclusively on underground firelines;

4. A person who works exclusively on portable fire extinguishers, pre-engineered commercial cooking hood systems, or other systems that are exempted from registration requirements in the Fire Suppression Program (24-33.5-1206.1, C. R. S.).

5. A person who works on residential plumbing appliances, fixtures, appurtenances, or multipurpose residential fire sprinkler systems in one- or two-family dwellings or townhomes;

6. A person who works on any system or item that is considered "plumbing" as defined in 12-58-102(5)(a), C. R. S.

7. A person who performs work on lawn sprinklers or irrigation drain systems; or,

8. A person performing fire suppression work on his or her personal home.

FIT4.3 Regulations/Procedures

A. Applicants shall complete and submit an application for registration as designated by the Division.

B. To be registered as a Sprinkler Fitter by the Division an applicant shall meet and agree to, and provide proof of the following requirements:

1. Satisfactory completion of an accredited sprinkler fitter apprenticeship program recognized by the United States Department of Labor or state apprenticeship agency, in accordance with the requirements of 29 CFR 29.1 et seq, or other similar apprenticeship program approved by the administrator; or,

2. Documented evidence that the applicant is currently authorized to practice as a sprinkler fitter in another state or jurisdiction that has substantially similar or greater requirements than the requirements established in this rule; or,

3. Documented evidence demonstrating that the applicant performed at least eight thousand (8,000) hours of practical work experience on fire suppression systems within the past five (5) years; or,

4. Otherwise, demonstrate similar competency as a sprinkler fitter as determined by the division.

C. Applicants shall also provide proof of a passing score on an examination approved by the administrator.

1. Examinations that have been approved by the administrator as acceptable for compliance with the examination requirement are:

a. United Association Star Pipefitter Mastery Exam; or,

b. CSA Sprinkler Commercial On-site Competent Person Exam (ASCR2); or,

c. City of Denver's Journeyman/Inspector Examination

2. Examinations specified in these rules taken to comply with another jurisdiction's registration requirements shall be accepted by the Division if the exam was taken within one (1) year of the application date.

D. New applicants shall submit a completed and notarized Affidavit of Legal Residency as required in 24-76.5-103(4)(b), C.R.S.

E. New applicants shall submit a copy of their current State's driver's license or Colorado Identification Card.

F. Applicants shall be required to pay a fee for registration and all other processing fees as specified in FIT11.

FIT4.4 Registration Period

A. The registration period for new and renewal registrations shall expire on June 30th each year regardless of when the registration is issued.

1. There shall be no pro-rate of registration fees nor extensions of the registration period granted.

FIT4.5 Registration Renewal

A. Registrants requesting a renewal of their sprinkler fitter registration must complete an application, provide documented continuing education, and pay a renewal fee.

1. During renewal years, applicants are not required to submit an Affidavit of Legal Residency, Driver's License, or a government issued, picture Identification Card.

B. In years that the division adopts a new edition of the fire code or standards, a sprinkler fitter shall be required to provide proof of passing of one of the examinations specified in FIT4.3(C)(1)(a-c)

1. During renewal years, when an examination is required to be taken, the Division will assess an examination verification and processing fee per application.

C. Registrants who do not apply within 60 days of the registration period expiration date will not be allowed to renew and must comply with the requirements of a new applicant. All new applicant registration fees shall apply.

FIT4.6 Continuing Education

A. A registrant may be renewed only if he or she has completed 24 or more hours of continuing education units (CEU) in subjects related to the sprinkler fitter industry. The education must consist of courses approved by the Division and have been completed by the registrant during the previous registration period.

B. Proof of continuing education shall be submitted with the registrant's renewal application and shall be in the following formats:

1. Copy of certificate, diploma, degree, or card indicating course completion or attendance; or

2. Copy of Formal letter, from issuing organization attesting to the registrant's attendance; or,

3. Other formal document approved by the Division.

4. The conversion rate for coursework/class attendance continuing education shall be 1 hour = 1 CEU (1:1).

C. Applicants may substitute a maximum of 16 CEU hours of registration-related work experience in addition to 8 CEU hours of documented coursework to attain the 24 CEU hours of required continuing education. All proof of work experience shall be by formal letter from the employer, contractor, project owner, steward, project manager, or business manager for which the work was performed.

1. The conversion rate for work experience shall be 100 hours = 1.0 CEU (100:1) on straight time with no provisions for overtime hours allowed.

2. All work experience substitutions shall be conducted during the previous registration period.

FIT5 Multipurpose Residential Fire Sprinkler System Inspector Certification

FIT5.1 Certification Required

A. No person shall act, assume to act, or advertise as an inspector of multipurpose residential fire sprinkler systems in one and two family dwellings and townhouses who is not currently certified by the Division or who do not meet the requirements of 12-58-104(k).

1. Persons currently certified as a Fire Suppression Inspector pursuant to 24-33.5-1206.4 are not required to meet the requirements of this section fit5.

FIT5.2 Regulations/Procedures

A. All applicants shall complete and submit an application for certification designated by the division.

B. To be certified as a Multipurpose Residential Fire Sprinkler System Inspector an applicant shall meet the following requirements.

1. Be currently employed by, under contract to, or volunteer services to the state or a governing body as a plumbing inspector assigned to perform compliance inspections on plumbing as specified in 12-58-102(5)(a) C.R.S; and,

2. Be at least eighteen years of age; and,

3. Not have violated any of the provisions specified in section 24-33.50-1206.6 (2) C.R.S. or 3 CCR 720-1; and,

4. Comply with all applicable standards adopted by the Division and the State Plumbing Board, and applicable codes, ordinances and resolutions adopted by municipalities, counties, and cities and counties.

C. Applicants shall also provide proof of a passing score on an examination approved by the administrator.

1. Examinations that have been approved by the Division as acceptable for compliance with the examination requirement are evidence of current certification as an:

a. ICC Residential Fire Sprinkler Inspector/Plans Examiner; or,

b. ICC Plumbing Inspector, issued after July 1, 2011; or,

C. ICC Residential Plumbing Inspector, issued after July 1, 2011.

D. New applicants shall submit a completed and notarized Affidavit of Legal Residency as required in 24-76.5-103(4)(b), C. R. S.

E. New applicants shall submit a copy of their current State's driver's license, or a government issued, picture Identification Card.

F. Applicants shall be required to pay a fee for certification and all other processing fees as specified in FIT11.

FIT5.3 Certification Period

A. Multipurpose residential fire sprinkler system inspector certifications shall be valid for three (3) years from the month of issuance.

1. There shall be no pro-rate of registration fees nor extensions of certification period granted.

FIT5.4 Certification Renewal

B. Persons requesting a renewal of their multipurpose residential fire sprinkler system inspector certification must complete an application, provide documented continuing education, or the ICC renewal certificate, and pay a renewal fee.

1. During renewal years, applicants are not required to submit an Affidavit of Legal Residency, Driver's License, or a government issued, picture Identification Card.

2. Certified persons who do not apply for renewal within 90 days of the certification period expiration date will not be allowed to renew and must comply with the requirements of a new applicant. All new applicant certification fees shall apply.

FIT5.5 Continuing Education

A. A certified inspector may be renewed only if he or she completed 30 or more hours of continuing education units (CEU) in subjects related to the plumbing or fire sprinkler industry or has their ICC certificate renewal. The education must consist of courses approved by the Division and have been completed by the inspector during the previous certification period.

B. Proof of continuing education shall be submitted with the renewal application and shall be in the following formats:

1. Copy of certificate, diploma, degree, or card indicating course completion or attendance; or

2. Copy of a formal letter, from the issuing organization, attesting to the inspector's attendance; or

3. Other formal document approved by the Division.

4. The conversion rate for coursework/class attendance continuing education shall be 1 hour = 1 CEU (1:1).

C. Applicants may substitute a maximum of 15 CEU hours of certification-related work experience in addition to 15 CEU hours of documented coursework to attain the 30 CEU hours of required continuing education. All proof of work experience shall be by formal letter from the employer that was used to meet the requirements of Section FIT5.2(B)(1) of these regulations.

1. The conversion rate for work experience shall be 100 hours = 1.0 CEU (100:1) on straight time with no provisions for overtime hours allowed.

2. All work experience substitutions shall be conducted during the previous certification period to be accepted.

FIT6 Complaints

A. Complaints alleging violation of any provision of 24-33.5-1206.5, C. R. S. through 1206.7, C. R. S., or the rules of this program shall be filed with the Director.

B. The Division may act on anonymous complaints or those made by complainants who desire to remain anonymous. However, individuals submitting complaints should be aware that such complaints are public records and may be available for inspection in accordance with the Colorado Public Records Act 24-7-2201 et seq, C. R. S.

C. The Division will investigate the information contained in the complaint. If proper evidence substantiates a violation of 24-33.5-1206.5 through 1206.7, C.R.S., or these rules the Division will proceed pursuant to FIT8 through FIT 10.

D. Should the Division determine that a hearing should be held, the Division will utilize the services of the Colorado Division of Administrative Hearings in accordance with the Colorado Administrative Procedures Act (24-1-101 et seq., C. R. S).

FIT7 Denial of application

A. The division may deny any application for registration or certification for any of the following reasons:

1. The applicant makes a false statement on the application form or in any of the attachments required for registration or certification.

a. False statement means providing false or misleading information or failing to include material information as requested.

3. The applicant fails to meet all of the requirements specified in the application.

4. The applicant is currently barred from registration, certification, or licensure from another State agency, governing body, or local jurisdiction.

5. The applicant has been convicted of a crime which reflects upon the integrity of the applicant in operating within the capacity for which they are registered.

6. The applicant has been terminated from employment from a registered fire suppression contractor, fire authority, or other governing body for engaging in negligent or unsafe work or construction practices.

FIT8 Registration Revocation

A. The division shall revoke sprinkler fitter registrations and inspector certifications under these regulations when the director has found that the person holding the registration has committed an act or has failed to perform a duty including but not limited to the following:

1. Fraud or material deception in the obtaining or renewing a registration or certification;

2. Professional incompetence as manifested by poor, faulty, or dangerous workmanship;

3. Engaging in conduct that is likely to deceive, defraud, or harm the public in the course of professional services or activities;

4. Contracting or assisting unregistered persons to perform services for which registration or certification is required under these rules;

5. Negligently performing any services regulated by the Division;

6 Using another registrant's or certified person's credentials to obtain or perform work regulated by these rules;

7. Failing to comply with the provisions of these rules.

B. All revocations shall be for a period no less than the remainder of the current registration period or one (1) year, whichever is greater.

FIT9 Registration Suspension

A. The administrator shall suspend the registration or certification status when the person holding the registration or certificate has committed an act or has failed to perform a duty that constitutes grounds for suspension including but not limited to the following:

1. After the second failure to provide proper registration identification to a certified inspector;

2. Failure or refusal to stop work or leave a job site upon request of the certified inspector;

3. Failure to notify the Division of any changes that may affect the person's current registration or certification status;

4. Expiration of a required, qualifying document or examination during the registration period;

5 Failing to comply with the provisions of these rules.

B. All suspensions shall be for a period no more than 1 month or the remainder of the current registration or certification period, whichever is less.

FIT10 Program Fines and appeals

A. In addition to suspension and revocation, the director may assess a fine for any conduct determined to constitute a violation of these rules.

B. The fines for violating any provision of 24-33.5-1206.5 through 1206.7, C. R. S., or the provisions of these rules shall be as follows:

1. a letter of admonition and a fine of not less than $100 or more than $1,000.

2. Any subsequent violation of a similar magnitude shall be assessed a fine of not less than $1,000 not to exceed $10,000 and shall result in immediate suspension of the registration or certification pending a hearing of revocation pursuant to 24-33.5-1204.5(1)(e).

3. Any violation determined by the director that constitutes a threat to public health, safety, or welfare shall result in immediate suspension, pending a revocation hearing pursuant to 24-33.5-1204.5(1)(e), C. R. S., and the Colorado Administrative Procedures Act (24-1-101 et seq., C. R. S.), and final agency action.

a. All fines collected pursuant to this subsection shall be deposited in the general fund.

C. Persons who feel aggrieved by the decision of the Director may request a hearing in accordance with the Colorado Administrative Procedures Act (C.R.S. 24-1-101 et seq.).

FIT11 Program Fee Schedule

A. The following fees shall apply for products and services provide by, or on behalf of the Division of Fire Safety:

1. Fire Sprinkler Fitter New Application $75.00

2. Fire Sprinkler Fitter Renewal Application $50.00

3. Multipurpose Residential Inspector New Application $30.00/3 years

4. Multipurpose Residential Inspector Renewal Application $30.00/3 years

5. Renewal late fee $25.00/application

6. Examination Verification and Processing $25.00

7. Verification of Program Reciprocity $25.00

8. Manual Application Data Entry or Pertinent Information changes performed by DFS $10.00

9. Mailing of ID card or payment receipt $10.00

FIT12 Publications and Rules Incorporated by Reference

A. All publications and rules adopted and incorporated by reference in these regulations are on file for public inspection by contacting the Division of Fire Safety. This rule does not include later amendments to or editions of any materials incorporated by reference. All publications and rules adopted and incorporated by reference in these regulations may be examined at any state publications depository library.

Notice of Proposed Rulemaking

Tracking number

2015-00295

Department

500,1008,2500 - Department of Human Services

Agency

2503 - Income Maintenance (Volume 3)

CCR number

9 CCR 2503-5

Rule title

ADULT FINANCIAL PROGRAMS

Rulemaking Hearing

Date

07/10/2015

Time

10:00 AM

Location

Colorado Department of Human Services, 1575 Sherman Street, 8th Floor C-Stat Room, Denver, CO 80203

Subjects and issues involved

#15-5-15-1: Revisions to the Income Maintenance Rules Concerning Implementation of S.B. 15-065 and S.B. 15-100 Clarifying the Restricted Use of Electronic Benefits Transfer (EBT) for Temporary Assistance for Needy Families (TANF)/Colorado Works and Adult Financial Cash Benefits

Statutory authority

26-1-107; 26-1-109; 26-1-111; 26-2-104, as amended by S.B. 15-065 and S.B. 15-100; 26-2-111; 26-2-702, C.R.S. (2014); 42 U.S.C. Section 608(a)(12) (2012)

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: Implementation of S.B. 15-065 and S.B. 15-100 Clarifying the Restricted Use of Electronic Benefits Transfer for Temporary Assistance for Needy Families (TANF)/Colorado Works and Adult Financial Cash Benefits

Rule-making#: 15-5-15-1

Office/Division or Program: Office of Economic Security/ Employment and Benefits Division

Rule Author: Danielle Dunaway

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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?)*

The Committee on Legal Services (COLS) recommended the repeal of rules previously adopted by the State Board of Human Services regarding Electronic Benefits Transfer (EBT) restrictions, as they were determined to be out of compliance with statutory requirements. These recommendations were passed in S.B. 15-100, effective May 15, 2015. Concurrent to the rule repeal in S.B. 15-100, S.B. 15-065 was signed into law on May 1, 2015. This law provided additional clarification on the prohibited use of public assistance EBT services at certain establishments.

While the majority of the prohibited establishments are effective upon the Governor's signature on May 1, 2015, pursuant to S.B. 15-065, establishments which provide the sale of medical marijuana or medical marijuana-infused products, the sale of retail marijuana or retail marijuana products, and adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment will not be effective until sixty days, which would be June 30, 2015.

The purpose of these rules is to clarify the appropriate use of EBT cards for recipients of Temporary Assistance for Needy Families (TANF)/Colorado Works and Adult Financial cash benefits to include all of the locations where EBT use is prohibited pursuant to state and federal law.

An emergency rule-making (which waives the initial Administrative Procedure Act noticing requirements) is necessary:

[X] to comply with state/federal law and/or

[ ] to preserve public health, safety and welfare

Explain: S.B. 15-100 was signed May 11, effective May 15, 2015. S.B. 15-065 was signed into law on May 1, 2015. This law provided additional clarification on the prohibited use of public assistance EBT services at certain establishments. Emergency adoption is necessary to implement these provisions in a timely manner and failure to do so would be in violation of recent legislation.

Initial Review	06/05/2015	Final Adoption	07/10/2015
Proposed Effective Date	06/05/2015	EMERGENCY Adoption	06/05/2015

[Note: "Strikethrough" indicates deletion from existing rules and "all caps" indicates addition of new rules.]

Title of Proposed Rule: Implementation of S.B. 15-065 and S.B. 15-100 Clarifying the Restricted Use of Electronic Benefits Transfer for Temporary Assistance for Needy Families (TANF)/Colorado Works and Adult Financial Cash Benefits

Rule-making#: 15-5-15-1

Office/Division or Program: Office of Economic Security/ Employment and Benefits Division

Rule Author: Danielle Dunaway

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E-Mail: danielle.dunaway@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 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)* 26-2-104, C.R.S. (2014), as amended by S.B. 15-065 and S.B. 15-100 - requires prohibited use of EBT cards in certain establishments, State Board to promulgate rules to implement the EBT card system;
26-2-111, C.R.S. (2014) - eligibility for public assistance and authority for the Adult Financial Programs;
26-2-702, C.R.S. (2014) - legislative intent in implementing the Colorado Works Program

42 U.S.C. Section 608(a)(12) (2012)- requires states to maintain policies and practices to prevent TANF funds from being used in any electronic benefit transfer transaction in any liquor store; any casino, gambling casino, or gambling establishment; or any adult-oriented establishment. Each state is required to report to the Department of Health and Human Services its implementation of policies and practices related to restricting recipients from using their TANF assistance in EBT or point-of-sale (POS) transactions at the locations specified.

Colorado's Temporary Assistance for Needy Families (TANF) State Plan requires compliance with 42 U.S.C. Section 608(a)(12) and includes marijuana shops as additional restricted establishments.

Does the rule incorporate material by reference?		Yes	X	No
Does this rule repeat language found in statute?	X	Yes		No

If yes, please explain.

The rules mirror statutory requirements in Section 26-2-104, C.R.S., for clarity.

The program has sent this proposed rule-making package to which stakeholders?

County Human Services Directors Association; Colorado Commission on Aging; Colorado Legal Services; The Legal Center; Colorado Senior Lobby; Single Entry Point agencies; Community Centered Boards; Economic Security Sub-PAC; Colorado Gerontological Society; All Families Deserve a Chance (AFDC) Coalition; Area Agencies on Aging; Legal Aid of Metropolitan Denver; Colorado Center on Law and Policy; Colorado Department of Health Care Policy and Financing; Colorado Department of Revenue, Enforcement Division, Liquor and Tobacco Enforcement; and, Colorado Department of Human Services Food Assistance Division, Low-Income Energy Assistance Program, Colorado Refugee Services Program, and Division of Child Welfare

Attachments:
Regulatory Analysis
Overview of Proposed Rule
Stakeholder Comment Summary

Title of Proposed Rule: Implementation of S.B. 15-065 and S.B. 15-100 Clarifying the Restricted Use of Electronic Benefits Transfer for Temporary Assistance for Needy Families (TANF)/Colorado Works and Adult Financial Cash Benefits

Rule-making#: 15-5-15-1

Office/Division or Program: Office of Economic Security/ Employment and Benefits Division

Rule Author: Danielle Dunaway

Phone: 303-866-2788

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?

All individuals who have cash benefits made available through the Electronic Benefits Transfer (EBT) card for Colorado Works and Adult Financial programs will be impacted by these proposed rules. While most individuals do not use their EBT cards in prohibited establishments, individuals who are currently accessing benefits through these establishments will need to find alternative locations to withdraw their cash benefits. This could impact these individuals as they may have to go greater distances to find appropriate alternatives. Individuals who choose to continue to use prohibited locations will be impacted by the required penalties associated with this new law.

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?

These rules will prevent Colorado Works and Adult Financial cash benefit recipients from using any electronic benefit transfer transaction as well as the prohibited use of automated teller machines (ATMs) or transactions with similar electronic technology in establishments such as, but not limited to, liquor stores, casinos, gambling casinos, gambling establishments, adult oriented establishments and marijuana shops.

There are approximately 18,001 Colorado Works and 32,152 Adult Financial recipients. These recipients either have their benefits direct deposited to their bank accounts or utilize EBT cards to access their benefits. Data demonstrates that .096% of individuals used their EBT cards in locations which are now considered prohibited. With initial education of prohibited locations occurring at application and redetermination, frequent monitoring of data, and escalating penalties for both the customer and the vendor housing the EBT machine, it can be assumed that most individuals will find acceptable alternatives to withdraw their cash benefits.

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)*

The cost of educational and communication materials.

REGULATORY ANALYSIS (continued**)**

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?

Internal queries were done to identify individuals currently using prohibited locations. Data reflects that in 2014, . 096% of individuals used their EBT cards in locations which are now considered prohibited.

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.

There are no other viable alternatives as these are requirements that implement law.

Title of Proposed Rule: Implementation of S.B. 15-065 and S.B. 15-100 Clarifying the Restricted Use of Electronic Benefits Transfer for Temporary Assistance for Needy Families (TANF)/Colorado Works and Adult Financial Cash Benefits

Rule-making#: 15-5-15-1

Office/Division or Program: Office of Economic Security/ Employment and Benefits Division

Rule Author: Danielle Dunaway

Phone: 303-866-2788

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			
3.520.4, D, 6	During the interview an explanation must be given about the process for using the EBT card	Revised to include the prohibited locations identified in statute	__	Yes	X	No
3.602.1, E, 2	During the interview an explanation must be given about the process for using the EBT card	Revised to include the prohibited locations identified in statute	__	Yes	X	No

Title of Proposed Rule: Implementation of S.B. 15-065 and S.B. 15-100 Clarifying the Restricted Use of Electronic Benefits Transfer for Temporary Assistance for Needy Families (TANF)/Colorado Works and Adult Financial Cash Benefits

Rule-making#: 15-5-15-1

Office/Division or Program: Office of Economic Security/ Employment and Benefits Division

Rule Author: Danielle Dunaway

Phone: 303-866-2788

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):

Food and Nutrition Division, Electronic Benefits Transfer and Low-Income Energy Assistance Program sections

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 Commission on Aging; Colorado Legal Services; The Legal Center; Colorado Senior Lobby; Single Entry Point agencies; Community Centered Boards; Economic Security Sub-PAC; Colorado Gerontological Society; All Families Deserve a Chance (AFDC) Coalition; Area Agencies on Aging; Legal Aid of Metropolitan Denver; Colorado Center on Law and Policy; Colorado Department of Health Care Policy and Financing; Colorado Department of Revenue, Enforcement Division, Liquor and Tobacco Enforcement; and, Colorado Department of Human Services Food Assistance Division, Low-Income Energy Assistance Program, Colorado Refugee Services Program, and Division of Child Welfare

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 the Department of Health Care Policy and Financing and the Colorado Department of Revenue. No input has been received.

[X] Yes [ ] No

Have these rules been reviewed by the appropriate Sub-PAC Committee?

[ ] Yes [X] No

Date presented _to be presented June 4, 2015_. Were there any issues raised? ____ Yes _X__ No

If not, why. Emergency rules are being proposed; will be presented to the Office of Economic Security Sub-PAC on June 4, 2015.

Title of Proposed Rule: Implementation of S.B. 15-065 and S.B. 15-100 Clarifying the Restricted Use of Electronic Benefits Transfer for Temporary Assistance for Needy Families (TANF)/Colorado Works and Adult Financial Cash Benefits

Rule-making#: 15-5-15-1

Office/Division or Program: Office of Economic Security/ Employment and Benefits Division

Rule Author: Danielle Dunaway

Phone: 303-866-2788

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.

3.520.4 APPLICATION PROCESSING [Rev. eff. 8/1/14]

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D. The interview shall include:

1. An explanation of the various assistance programs available and an opportunity to apply for those additional programs;

2. A brief explanation of the eligibility process and the eligibility requirements;

3. A review of the application with the client to:

   a. Confirm all information on the application;

   b. Answer questions not completed on the application; and,

   c. Provide the client an opportunity to clarify unclear, inconsistent, inaccurate, or questionable statements.

   d. For AND only, provide, explain and obtain necessary signatures on the Authorization for Reimbursement of Interim Assistance form (IM-14).

4. A request for verification of application declarations.

   a. The client has the primary responsibility to provide information necessary to establish eligibility.

   b. If the client is unable to do so, the county department shall assist the client to obtain verification through collateral contacts or a home visit.

   c. If the client returns the verifications within thirty (30) calendar days after denial, the following processing requirements shall be implemented:

      1) If the client has good cause, the denial shall be rescinded and eligibility determined, using the original application date.

      2) If the client does not have good cause, the county department shall use the original application, but the date of the application shall be the date all verifications were received.

   d. If the client returns the verification thirty-one (31) or more calendar days after the denial, the county department shall require the client to complete a new application.

5. Discussion of the client's rights and responsibilities, to include:

   a. The county department's requirement to inform the client in writing at application and redetermination of the requirement for a client to report any changes in circumstances within thirty (30) calendar days.

   b. The client's responsibility to notify the county department in writing within thirty (30) calendar days of any change in resources or income or other change in circumstances which affects eligibility or benefit amount.

c. The county department's responsibility to maintain confidentiality of records and information.

d. The client's right to non-discrimination provisions.

e. The client's right to a county conference or state-level appeal.

f. The client's right to review and copy his/her case file.

6. An explanation provided regarding the process of utilizing the electronic benefit transfer (EBT) card. THIS EXPLANATION SHALL INCLUDE: ~~prohibited establishments including, but not limited to, liquor stores, gambling establishments, adult oriented establishments, and marijuana shops; and, an explanation that the cash portion issued on the EBT card may be suspended with identified misuse.~~

   a. IDENTIFICATION OF PROHIBITED ESTABLISHMENTS WHICH PROVIDE:

      1) LICENSED GAMING;

      2) IN-STATE SIMULCAST;

      3) TRACKS FOR RACING;

      4) COMMERCIAL BINGO FACILITIES;

      5) THE SALE OF FIREARMS AS THE PRINCIPAL BUSINESS;

      6) THE SALE OF LIQUOR;

      7) THE SALE OF MEDICAL MARIJUANA OR MEDICAL MARIJUANA-INFUSED PRODUCTS EFFECTIVE JUNE 30, 2015;

      8) THE SALE OF RETAIL MARIJUANA OR RETAIL MARIJUANA PRODUCTS EFFECTIVE JUNE 30, 2015; AND,

      9) ADULT-ORIENTED ENTERTAINMENT IN WHICH PERFORMERS DISROBE OR PERFORM IN AN UNCLOTHED STATE FOR ENTERTAINMENT EFFECTIVE JUNE 30, 2015.

   b. AN EXPLANATION THAT THE CASH PORTION ISSUED ON THE EBT CARD MAY BE SUSPENDED WITH IDENTIFIED MISUSE.

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3.602 APPLICATIONS FOR COLORADO WORKS

3.602.1 Applications [Rev. eff. 8/1/14]

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E. Receiving Applications for Colorado Works Benefits

1. When receiving applications for benefits, county workers shall:

   a. Receive applications;

   b. Review applications for completeness and determine eligibility for assistance;

   c. Make a home visit when required by county policy to determine a county approved setting for a minor applicant; and,

   d. Refer the applicant or participant to other services when appropriate.

2. The application process shall consist of all activity from the date the application is received from the applicant until a determination concerning eligibility is made. Language translation via interpreter shall be provided by the county department of residence as needed. The major steps in the application process shall include:

   a. The application shall be date stamped by the county department to secure the application date for the applicant;

   b. An explanation shall be provided to the applicant of the various benefit options;

   c. An explanation shall be provided to the applicant of the eligibility factors;

   d. An explanation shall be provided to the applicant of the applicant's responsibility to accurately and fully complete the application, provide documents to substantiate eligibility factors, and that the applicant may use friends, relatives, or other persons to assist in the completion of the application;

   e. An assurance shall be provided to the applicant of the county worker's availability to assist in the completion of the application and to secure needed documentation which the applicant is unable to otherwise secure;

   f. An explanation shall be provided to the applicant of the process to determine eligibility;

   g. An explanation shall be provided to the applicant of the applicant's rights and responsibilities including confidentiality of records and information, the right to non-discrimination provisions, the right to a county dispute resolution process, the right to a state-level appeal, the right to apply for another category of assistance and that a determination of the applicant's eligibility for such other assistance will be made;

   h. An explanation shall be provided to the applicant that the applicant may terminate the application process at any time.

i. The agency shall inform all applicants in writing at the time of application that the agency will use all Social Security Numbers (SSN) of required household members to obtain information available through state identified sources. One interface includes, but is not limited to, the Income and Eligibility Verification System (IEVS) used to obtain information of income, eligibility, and the correct amount of assistance payments. Information gathered through State identified sources may be shared with other assistance programs, other states, the Social Security Administration, the Department of Labor and Employment, and the Child Support Enforcement Program; and,

j. An explanation shall be provided to the applicant of all Colorado Works program benefits and requirements applicable to the family members in the household. The county department shall, when appropriate, provide the information verbally and in written form.

k. An explanation provided regarding the process of utilizing the electronic benefit transfer (EBT) card. THIS EXPLANATION SHALL INCLUDE: ~~prohibited establishments including, but not limited to, liquor stores, gambling establishments, adult oriented establishments, and marijuana shops; and, an explanation that the cash portion issued on the EBT card may be suspended with identified misuse.~~

1) IDENTIFICATION OF PROHIBITED ESTABLISHMENTS WHICH PROVIDE:

a) LICENSED GAMING;

b) IN-STATE SIMULCAST;

c) TRACKS FOR RACING;

d) COMMERCIAL BINGO FACILITIES;

e) THE SALE OF FIREARMS AS THE PRINCIPAL BUSINESS;

f) THE SALE OF LIQUOR;

g) THE SALE OF MEDICAL MARIJUANA OR MEDICAL MARIJUANA-INFUSED PRODUCTS EFFECTIVE JUNE 30, 2015;

h) THE SALE OF RETAIL MARIJUANA OR RETAIL MARIJUANA PRODUCTS EFFECTIVE JUNE 30, 2015; AND,

i) ADULT-ORIENTED ENTERTAINMENT IN WHICH PERFORMERS DISROBE OR PERFORM IN AN UNCLOTHED STATE FOR ENTERTAINMENT EFFECTIVE JUNE 30, 2015.

2) AN EXPLANATION THAT THE CASH PORTION ISSUED ON THE EBT CARD MAY BE SUSPENDED WITH IDENTIFIED MISUSE.

3. An application has been made when the county department receives the signed public assistance application forms prescribed by the State Department. An application is distinguished from an inquiry. Eligibility requirements can be found at Section 3.604 Eligibility Criteria for Colorado Works Payments and Services.

4. An application must be accepted by any county department; however, it is the responsibility of the county of residence to determine eligibility. The county department

that received the application incorrectly shall forward the application to the county of residence promptly.

5. An application may be submitted by the applicant or by an individual acting on the applicant's behalf when the applicant is unable to submit an application.

6. Applications for Colorado Works shall be made by a specified caretaker with whom a dependent child(ren) is living.

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Notice of Proposed Rulemaking

Tracking number

2015-00306

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

07/10/2015

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

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COLORADO
Department of Health Care Policy & Financing
Medical Services Board

May 29, 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 July 2015 meeting of the Medical Services Board of the Department of Health Care Policy and Financing. The meeting will be held on Friday, July 10, 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, July 10, 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 15-04-23-A, Revision to the Medical Assistance Pharmacy Rule Concerning Durable Medical Equipment and Disposable Medical Supplies Provider Rate Increase, Section 8.590.7.I.

Medical Assistance. Durable Medical Equipment and Disposable Medical Supplies. Effective July 1, 2015, encounter rates will be raised by 0.5% to account for a General Assembly funding appropriation. The Medical Assistance Rule concerning Durable Medical Equipment and Disposable Medical Supplies, 10 C.C.R 2505-10, Section 8.590.7.I, is being revised to reflect the provider reimbursement rate increase per Senate Bill 15-234.

The authority for this rule is contained in SB 15-234 and in sections 25.5-1-301 through 25.5-1-303, C.R.S. (2014)

MSB 15-02-19-A, Revision to the Medical Assistance Long Term Supports and Services Benefit Division Rule Concerning Home and Community Based Services for Persons with Spinal Cord Injury, Section 8.517

Medical Assistance. Long Term Services and Supports Rule. The current rules providing guidance for the Home and Community-Based Services for persons with Spinal Cord Injury (HCBS-SCI) waiver pilot program have limited complementary and integrative health services provider participation. In addition, elements of the rule do not align with legislation recently passed that extends the SCI Waiver an additional five years as well as the subsequent application for the SCI Waiver Renewal the Department is submitting to CMS. Therefore, the 10 C.C.R. 2505-10, Sections 8.517 is being amended to change the term Alternative Therapies to Complement and Integrative Health throughout the rule. Section 8.517.2 General Definitions will be amended to reflect the new provider model. Section 8.517.4 Scope and Purpose will be amended to reflect the new legislation to extend the pilot program. Section 8.517.5 Client Eligibility will be amended to include hospital level of care. Section 8.517.9

Provider Agencies and Section 8.517.10 Alternative Therapies will be amended to create a new provider model and align with the application for the waiver renewal effective 7/1/15.

The authority for this rule is contained in 42 U.S.C. Section 1915 (c); C.R.S. sections 25.5-6-1301 et seq.; and C.R.S. 25.5-1-301 through 25.5-1-303, C.R.S. (2014).

MSB 15-05-04-A, Revision to the Medical Assistance Rates Section Rule Concerning Payments For Outpatient Hospital Services, Section 8.300.6

Medical Assistance. Outpatient Hospital Services. Reimbursement for Medicaid outpatient hospitals services was increased by 0.5 percent (0.5%) pursuant to the FY 2015-16 Long Appropriations Bill, Senate Bill 15-234, Therefore, the rules for the reimbursement for outpatient hospital services, 10 C.C.R. 2505-10 Section 8.300.6 are being revised to include the increased reimbursement effective July 1, 2015.

The authority for this rule is contained in 24-4-103(6), 25.5-1-301 through 25.5-1-303, C.R.S. (2014).

Notice of Proposed Rulemaking

Tracking number

2015-00294

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 2509-1

Rule title

OVERVIEW OF CHILD WELFARE SERVICES

Rulemaking Hearing

Date

07/10/2015

Time

10:00 AM

Location

Colorado Department of Human Services, 1575 Sherman Street, 8th Floor C-Stat Room, Denver, CO 80203

Subjects and issues involved

#15-4-17-1: Revisions to the Social Services Rules Concerning Implementation of S.B. 15-100 to Repeal Section 7.000.3 That Allowed Exceptions to Child Welfare Rules

Statutory authority

19-1-116-(1.5), (2)(b(I); 26-1-107; 26-1-109; 26-1-111; 26-5.5-103(1), C.R.S. (2014)

Contact information

Name

Ann "Mimi" Scheuermann

Title

Division of Child Welfare

Telephone

303-866-5794

Email

ann.scheuermann@state.co.us

Title of Proposed Rule: Implementation of S.B. 15-100 to Repeal Section 7.000.3 That Allowed Exceptions to Child Welfare Rules

Rule-making#: 15-4-17-1

Office/Division or Program: Office of Children, Youth and Families/Division of Child Welfare

Rule Author: Ann "Mimi" Scheuermann

Phone: 303-866-5794

E-Mail: ann.scheuermann@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 proposed rule change complies with S.B. 15-100, which repeals a rule that allowed exceptions to child welfare rules when justification for the exception and the alternative provision meet certain requirements that would not impact the safety and/or risk of a child.

The Legislative Committee on Legal Services reviewed this rule out of its usual cycle and voted to recommend repeal of rule 7.000.3. It was subsequently included in Senate Bill 15-100, the annual rule review. This part of S.B. 15-100 is effective upon passage.

An emergency rule-making (which waives the initial Administrative Procedure Act noticing requirements) is necessary:

[X] to comply with state/federal law and/or

[ ] to preserve public health, safety and welfare

Explain: This rule implements a section of S.B. 15-100 that becomes effective upon passage; thus, it is necessary to promulgate the repeal of this rule on an emergency basis. The Governor signed the bill on May 11, 2015.

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)*
19-1-116-(1.5), (2)(b(I), C.R.S. (2014) – alternative services to prevent continued involvement with county child welfare system, including goals and alternative services in plan; and,
26-5.5-103(1), C.R.S. (2014) – authorizes State Board to establish "at risk" criteria

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Initial Review	06/05/2015	Final Adoption	07/10/2015
Proposed Effective Date	06/05/2015	EMERGENCY Adoption	06/05/2015

[Note: "Strikethrough" indicates deletion from existing rules and "all caps" indicates addition of new rules.]

Title of Proposed Rule: Implementation of S.B. 15-100 to Repeal Section 7.000.3 That Allowed Exceptions to Child Welfare Rules

Rule-making#: 15-4-17-1

Office/Division or Program: Office of Children, Youth and Families/Division of Child Welfare

Rule Author: Ann “Mimi” Scheuermann

Phone: 303-866-5794

E-Mail: ann.scheuermann@state.co.us

STATEMENT OF BASIS AND PURPOSE (continued)

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?

Child Protection Task Group, Permanency Task Group, Child Welfare Sub-PAC, Colorado Human Services Directors Association, Office of the Child’s Representative, Rocky Mountain Children’s Law Center

Attachments:
Regulatory Analysis
Overview of Proposed Rule
Stakeholder Comment Summary

Title of Proposed Rule: Implementation of S.B. 15-100 to Repeal Section 7.000.3 That Allowed Exceptions to Child Welfare Rules

Rule-making#: 15-4-17-1

Office/Division or Program: Office of Children, Youth and Families/Division of Child Welfare

Rule Author: Ann "Mimi" Scheuermann

Phone: 303-866-5794

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?

County departments of human/social services will be impacted by this rule change as it will eliminate the possibility of allowing for county flexibility in making exceptions to any child welfare rule under specific circumstances as documented by the county.

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?

As the rule has been in effect for only four (4) months, the impact is negligible.

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)*

There is no fiscal impact.

County Fiscal Impact

There is no fiscal impact.

Federal Fiscal Impact

There is no fiscal impact.

Other Fiscal Impact *(such as providers, local governments, etc.)*

There is no fiscal impact.

4. Data Description:
List and explain any data, such as studies, federal announcements, or questionnaires, which were relied upon when developing this rule?

There were no data, federal announcements, or questionnaires relied upon to make this revision.

Title of Proposed Rule: Implementation of S.B. 15-100 to Repeal Section 7.000.3 That Allowed Exceptions to Child Welfare Rules

Rule-making#: 15-4-17-1

Office/Division or Program: Office of Children, Youth and Families/Division of Child Welfare

Rule Author: Ann “Mimi” Scheuermann

Phone: 303-866-5794

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.

There were no alternatives considered in regards to the change in this rule. The Legislative Committee on Legal Services reviewed this rule out of its usual cycle and voted to recommend repeal of rule 7.000.3. It was included in Senate Bill 15-100, the annual rule review.

Title of Proposed Rule: Implementation of S.B. 15-100 to Repeal Section 7.000.3 That Allowed Exceptions to Child Welfare Rules

Rule-making#: 15-4-17-1

Office/Division or Program: Office of Children, Youth and Families/Division of Child Welfare

Rule Author: Ann “Mimi” Scheuermann

Phone: 303-866-5794

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
7.000.3	Exceptions: county departments may make exceptions to child welfare rules when justification for the exception and the alternative provision meet certain requirements that would not impact the safety and/or risk of a child	Repealed pursuant to S.B. 15-100	__ Yes X No
7.000.4-7.000.5	Place holder for no current rules	Add 7.000.3 to the place holder to account for repeal of the current rule	__ Yes No

Title of Proposed Rule: Implementation of S.B. 15-100 to Repeal Section 7.000.3 That Allowed Exceptions to Child Welfare Rules

Rule-making#: 15-4-17-1

Office/Division or Program: Office of Children, Youth and Families/Division of Child Welfare

Rule Author: Ann "Mimi" Scheuermann

Phone: 303-866-5794

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):

Due to the legislative mandate to repeal the rule upon passage and emergency nature to do it in a timely manner, there was no opportunity to obtain input during development.

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:

Child Protection Task Group, Permanency Task Group, Child Welfare Sub-PAC, Colorado Human Services Directors Association, Office of the Child's Representative, Rocky Mountain Children's Law Center

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 _to be presented on May 7, 2015_. Were there any issues raised? ____ Yes ____ No

If not, why. The rule was repealed in legislation.

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.

~~**7.000.3 EXCEPTIONS [Eff. 1/1/15]**~~

~~Exceptions to rule are allowed when justification for the exception and the alternative provision meet the following requirement(s):~~

~~A. Do not impact the safety and/or risk of a child(ren); and,~~

~~B. Are in the best interest of the child(ren).~~

~~The exception shall be documented in the statewide automated case management system and approved by a county department supervisor. Exceptions cannot be granted for requirements of federal law, state statutes, or those rules directly related to the safety and/or risk of a child(ren). Exceptions cannot be granted for financial limitations established in rule.~~

7.000.3 ~~**7.000.4**~~ **– 7.000.5 (None)**

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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 06/30/2015

Effective date

06/30/2015

PENSION AND ANNUITY SUBTRACTION

REGULATION 39-22-104(4)(F)

(1) **General Rule.**

(a) Pension and annuity benefits subject to the limitations set forth in paragraph (2) are eligible to be subtracted from a taxpayer's federal taxable income if the benefits are paid periodically, are attributable to personal services performed by an individual prior to his or her retirement from employment, paid after such retirement, and that arise from:

(i) An employee-employer relationship;

(ii) Service in the uniformed services of the United States; or

(iii) Contributions to a retirement plan that are deductible for federal income tax purposes.

(b) Periodic payments means a series of amounts paid at regular intervals (e.g., weekly, monthly, or yearly) over a period of time greater than one year.

(c) *Additional Qualifying Benefits*. The following pension and annuity benefits qualify for the subtraction, even though they are not paid periodically, are not attributable to personal services of the individual prior to retirement, and/or do not arise from one or more of the sources described in paragraphs (1)(a)(i)-(iii):

(i) Distributions from individual retirement arrangements (IRAs);

(ii) Distributions from self-employed retirement accounts;

(iii) Amounts received from fully matured privately purchased annuities;

(iv) Social security benefits; and

(v) Amounts paid from any such sources (i.e., sources described in (1)(a)(i) - (iii) and (c)(i)-(iv), above) by reason of permanent disability or death of the person entitled to receive the benefits.

(2) **Limitations.** The following are limitations on the subtraction:

(a) The amount of income that can be subtracted is limited to:

(i) $20,000 for a taxpayer who is at least 55 years of age, but not more than 64 years of age, at the end of the tax year (See paragraph (3)(c) for benefits received due to the death of the person who was originally entitled to receive such benefits); or

(ii) $24,000 for a taxpayer who is at least 65 years of age at the end of the tax year.

(b) The subtraction applies only to the extent taxpayer reports, in the same tax year that the subtraction is claimed, the pension or annuity benefit as federal taxable income on his or her federal income tax return.

(c) *Premature Distributions*. Distributions from an IRA or self-employed retirement account plan (e.g., a 401(k), savings incentive match plan for employees (SIMPLE), or Simple Employee Pension (SEP) retirement plan for a self-employed taxpayer) that are deemed to be premature for federal income tax purposes do not qualify for the subtraction. A premature distribution (sometimes referred to as an early distribution) for federal tax purposes means a distribution that is subject to a federal income tax penalty (sometimes referred to as additional federal tax). See I.R.C. § 72(t). In general, a distribution made before a taxpayer reaches the minimum retirement age required by the pension or annuity plan is subject to the premature distribution penalty. However, federal law does not impose the premature distribution penalty for certain distributions made prior to the minimum retirement age (e.g., death, hardship, etc.). See I.R.C. § 72(t). These distributions are not disqualified from the subtraction if they otherwise meet the requirements and limitations of paragraphs (1) and (2). The restriction regarding premature distributions does not apply to pension and annuity benefits distributed from sources other than an IRA or self-employed retirement account plan.

(i) *Example 1.* A distribution made from a self-employed 401(k) retirement plan to a taxpayer who is 55 years old does not meet the minimum retirement age for federal tax purposes and, therefore, is considered a premature distribution subject to the federal income tax penalty. Such distribution is not eligible for this subtraction because a premature distribution from a self-employed retirement account is not eligible for the subtraction.

(ii) *Example 2*. Same facts as Example 1 except that the 401(k) plan is not a self-employed retirement plan but, rather, a retirement plan arising from an employer-employee relationship. The distribution is eligible for the subtraction even though the distribution is subject to the premature distribution penalty because premature distribution penalty only disqualifies distributions from self-employed retirement accounts and IRAs and does not disqualify distributions from other retirement plans.

(iii) *Example 3*. Same facts as Example 1 except the distribution is a lump-sum distribution of the entire fund made for hardship and, therefore, is not subject to the federal premature distribution penalty. The distribution is allowed as a subtraction. Note that the distribution is eligible for the subtraction even though it is a lump-sum payment (i.e., not a periodic payment) because distributions from a self-employed retirement plan do not have to be periodic.

(iv) *Example 4*. Same facts as Example 2 except the distribution is a lump-sum distribution of the entire fund and is subject to the premature distribution penalty. The distribution is not eligible for the subtraction because the distribution does not qualify as a periodic payment.

(d) See §39-22-104(4)(f)(III), C.R.S. for apportionment of social security income reported in a Colorado joint return.

(3) **Examples of Pension and Annuity Benefits that Qualify for the Subtraction.** The following is a non-exhaustive list of pension or annuity benefits that, if the benefit is derived from one or more of the sources described in paragraph (1), above, and is subject to the limitations of paragraph (2), qualify for the subtraction:

(a) Pension and annuity plan benefits provided by a government employer to its employees after retirement.

(b) Distributions from a 401(k) plan, tax-sheltered annuity plan (403(b) plan), 501(c)(18)(D) plan, salary reduction simplified employee pension plan (SARSEP), SIMPLE plan, thrift savings plan for federal employees, IRAs, SEP plan, profit-sharing plan, defined benefit plan, money purchase plan, employee stock ownership plan, 457 plan, governmental plan (e.g., 401(a) plan), and 409A nonqualified deferred compensation plan.

(c) Pension and annuity benefits, including any lump-sum distributions from sources in paragraph (1)(a)(i) - (iii), paid to an individual who is less than 55 years of age at the close of the tax year if such benefits were received because of the death of the person who was originally entitled to receive such benefits. This paragraph (3)(c) applies only if the benefits are paid to an individual. The $20,000 dollar limitation in paragraph (2) applies to individual beneficiaries who are, at the end of the tax year, less than 65 years of age (including beneficiaries who are less than 55 years of age), and the $24,000 limitation in paragraph (2) applies to individual beneficiaries who are at least 65 years of age at the end of the tax year. Non-individuals (e.g., trust, estate, partnership, and other legal entity) that receive such benefits and individuals who receive such benefits from non-individuals may not claim the subtraction, even if the entity that received the benefit redistributes the benefit to an individual.

(d) Taxable permanent disability benefits received by an individual described in paragraph (1)(c)(v) who meets the age limitations set forth in paragraphs (2) even if the compensation is characterized as wages rather than pension and annuity income for federal income tax purposes.

(e) Payments made pursuant to a divorce settlement or decree to the extent the payments arise from one of the sources listed in paragraph (1) and are subject to the limitations of paragraphs (2). The settlement or decree must expressly state the amount of the pension or annuity benefit allocated to the taxpayer in order for the taxpayer to claim the subtraction. A nonperiodic payment representing a future stream of periodic payments from a pension or annuity plan made pursuant to the divorce settlement or decree will not qualify for the subtraction, unless the pension or annuity plan benefit is a pension or annuity plan listed as an exception in paragraph (1)(c), above.

(4) **Examples of Pension and Annuity Benefits that Do Not Qualify for the Subtraction.** The following is a non-exhaustive list of benefits that do not qualify as a pension or annuity benefit for purposes of this subtraction:

(a) A lump-sum distribution from a qualified or nonqualified pension or profit-sharing plan as defined in I.R.C. § 401. See Public Law 102-318, § 511 (moving the provision for income averaging for lump-sum distributions set forth in I.R.C. § 402(e)(1) to § 402(d)), and Public Law 104-188, §1401 (eliminating deduction and income averaging for lump-sum distributions set forth in I.R.C. § 402).

(b) Distributions from a Roth IRA are excluded from federal gross income and, therefore, are not eligible for the subtraction. Contributions are also not eligible to be included in the subtraction.

(c) Sick leave or vacation leave payout.

(d) Early retirement incentive pay.

(e) Severance pay.

(f) Unemployment benefits.

(g) Interest income from a bank plan that is distributed to a surviving spouse as retirement income upon death of deceased spouse.

(h) Joint savings accounts or jointly held certificates of deposits that are paid to the surviving spouse or owner.

(i) Alimony payments, including that portion of military pension awarded to a nonmilitary spouse as a result of a divorce settlement that is classified as alimony, except for alimony income that meets the requirements set forth in paragraph (3)(e), above.

(j) Life insurance proceeds.

(k) Payments from a long-term care insurance contract.

(l) Disability payments that are not for permanent disability, regardless of their source, even if reported as pension and annuity income on taxpayer's federal income tax return.

(m) Insurance or civil damages compensation for loss of use or function of a part of the body (e.g., loss of a limb).

(n) A guaranteed payment by a partnership to a partner, unless the payment is part of a plan that meets the general rule of paragraph (1) and subject to the limitations of paragraphs (2), above.

(o) Distributions from an otherwise qualified profit-sharing plan to an employee prior to retirement.

(p) Distributions from an otherwise qualified employer-sponsored savings plan or employee stock ownership plan prior to retirement.

(q) Contribution to a pension or annuity plan, regardless of whether the contribution is taxable to the beneficiary of the pension or annuity plan at the time the contribution is made.

(r) Distribution of interest income derived from an U.S. savings bond, unless the bond was an asset of a pension or annuity plan that qualifies for the subtraction.

(5) **Trusts/Estates.**

(a) Trusts and estates cannot claim the pension and annuity benefit subtraction.

(b) An individual who is a beneficiary of a trust or estate cannot claim the subtraction for distributions of pension or annuity benefits from a trust or estate.

(6) **Railroad Retirement Benefits.**

(a) Railroad retirement annuity benefits, including Tier I and Tier II, annuity benefits for spouses, divorced spouses, survivors, vested dual benefits, supplemental railroad retirement annuity benefits and railroad disability benefits are exempt from state taxation under Section 231m of the Railroad Retirement Act (45 U.S.C. 231m and 231a(a)),

regardless of whether such benefits meet the qualifications set forth in paragraph (1) of this regulation. The amount of such subtraction is not limited by the dollar limitations set forth in paragraph (2), above. If a taxpayer also receives pension or annuity benefits described in paragraph (1), above, that qualify for the subtraction, then the amount of railroad retirement benefits is not included in calculating whether pension or annuity benefits of paragraph (1) have exceeded the dollar limitations set forth in paragraph (2).

(b) If the benefits described in paragraph (6)(a), above, are included in the taxpayer's federal taxable income, the benefits are subtracted when computing Colorado taxable income as a "railroad retirement benefits subtraction." The income included in the railroad retirement benefits subtraction cannot be subtracted a second time under the pension and annuity subtraction and the amount of any railroad retirement benefits subtraction will not count against the $20,000 or $24,000 limitation of the pension / annuity subtraction.

Cross reference: Public Law 102-318, §511, and Public Law 104-188, §1401. Prior to 1996, lump-sum distributions that were subject to the income tax averaging provisions of I.R.C. §402(e)(1) qualified for the subtraction if the deduction for such distributions, authorized by I.R.C. § 402(e)(3), were added to Colorado taxable income pursuant to §39-22-104(3)(c), C.R.S. In 1992, Congress rewrote I.R.C. §402(e) and moved the lump-sum deduction and income-averaging provisions to I.R.C. §402(d) and, in 1996 (P.L. 104-188), completely eliminated the deduction and income tax averaging provisions

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

Taxpayer Service Division - Tax Group

on 05/12/2015

1 CCR 201-2

INCOME TAX

The above-referenced rules were submitted to this office on 05/13/2015 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.

May 18, 2015 11:28:08

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
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Permanent Rules Adopted

Department

Department of Revenue

Agency

Taxpayer Service Division - Tax Group

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1 CCR 201-2

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1 CCR 201-2 INCOME TAX 1 - eff 06/30/2015

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06/30/2015

WILDFIRE MITIGATION MEASURES SUBTRACTION

REGULATION 39-22-104(4)(N.5)

(1) **Paid Out-of-pocket Expenses.** A cost eligible for the subtraction must be an actual out-of-pocket expense incurred and paid by the landowner primarily for wildfire mitigation measures.

(a) *Examples*.

(i) A landowner who hires and pays a third-party contractor to cut down trees as a wildfire mitigation measure has incurred and paid an out-of-pocket expense.

(ii) A landowner who personally cuts down trees as a wildfire mitigation measure has not incurred or paid an out-of-pocket expense.

(iii) A chainsaw is eligible for the subtraction if it is purchased primarily for wildfire mitigation measures.

(2) **Costs Incurred Primarily for Non-Wildfire Mitigation Purposes.** Any cost must be for property or services primarily used for wildfire mitigation measures.

(a) *Examples*.

(i) Purchases of an all-terrain vehicle, truck, tractor, or trailer are not eligible for the subtraction, even though the landowner may use these items to perform wildfire mitigation measures, because these items are not primarily used for wildfire mitigation measures. However, rental charges for the items identified, above, are eligible for the subtraction if the landowner primarily uses the rented items to perform wildfire mitigation measures.

(ii) Costs for landscaping that are primarily for aesthetic purposes, such as installation of a patio, lawn, garden or similar landscaping, but also serve as a fire break or other wildfire mitigation measure, are not eligible for the subtraction because the costs were not incurred primarily for wildfire mitigation measures.

(3) **Ineligible Costs.** Costs that are not eligible for the subtraction include an inspection or certification fee, in-kind contribution, donation, incentive, or a cost sharing arrangement associated with, or grants awarded for, performing wildfire mitigation measures.

(a) *In-Kind Contributions.*

(i) *Example*. A landowner who personally performs wildfire mitigation measures for a summer camp and who also contributes the use of a chainsaw and truck as a gift to the summer camp cannot claim the value of the landowner's personal services (because the personal service is not an actual out-of-pocket expense but rather an in-kind contribution and donation, neither of which qualify as "costs" for purposes of this rule) or the in-kind contribution of the rental value for the use of the chainsaw or truck on the summer camp's property.

(b) *Donation.*

(i) *Example*. A landowner allows without charge the use of the landowner's trailer by a third party to perform wildfire mitigation measures. Neither the landlord nor the third party may claim the value of the donation to rent the trailer as a subtraction.

(ii) A landowner who performs wildfire mitigation services for free to a summer camp that neighbors the landowner's property cannot claim the value of the donation as a subtraction.

(c) *Cost Sharing*. Cost sharing is an arrangement by which participants, which may include landowners and non-landowners, agree to share the cost of performing wildfire mitigation measures.

(i) *Example*. Neighboring landowners who agree to share the costs of purchasing or renting equipment for, or for hiring a third party contractor to perform, wildfire mitigation measures on their respective private lands cannot claim their portion of such costs as a subtraction

(d) *Grants and Incentives*. A cost paid from, or reimbursed by, an incentive or grant awarded to, or made available to, a landowner to perform wildfire mitigation measures is not eligible for the subtraction.

(4) **Landowner.** A taxpayer claiming the subtraction must be a landowner of private land located in Colorado.

(a) *Estate in Land*. A landowner is an individual who is an owner of record of a fee interest in real property (whether held solely, jointly or in common), easement, right-of-way, or other estate in real property. An easement is a non-possessory interest in real property to enter on to land and use the land, or to restrict the use of such land, for an indefinite or specific period of time, such as a right-of-way to travel across land or to use the land for recreational purposes (e.g., fishing, hunting, camping). A right-of-way typically is a type of easement. A lease is an estate in land and, therefore, a lessee is landowner for purposes of this rule, provided that evidence of the lease is properly recorded. The lessor is also a landowner as either the owner of a fee interest in the land or as a lessee who is acting in the capacity of a sublessor.

(b) *Taxpayer's Property Interest*. Wildfire mitigation measures must be performed on the taxpayer's property interest.

(i) *Examples*.

(A) Wildfire mitigation measures performed by a taxpayer who has a lease or easement on land owned by someone else can claim the subtraction because the work was performed on an estate (e.g., lease) owned by the taxpayer, even though a third party owned the underlying fee interest in the land.

(B) A taxpayer who pays for wildfire mitigation measures on a neighboring landowner's land for the purpose of protecting the taxpayer's land cannot claim the costs for such work because the wildfire mitigation measure was not performed on taxpayer's land.

(c) *Public property*. A person who holds an easement, right-of-way, lease or other estate in land that is owned by a governmental entity is not a landowner because the subtraction is

available only if the wildfire mitigation measures are performed on private land, not public land.

(i) *Examples*.

(A) A sole proprietor who owns or leases a building on land owned by the government is not a landowner because the land is not private land, even though the proprietor owns a private estate (lease).

(B) An individual who has an easement or right-of-way, which includes fencing, bridging, buildings or fixtures owned by the individual, on land owned by the federal Bureau of Land Management is not a landowner of private land and cannot claim the subtraction for wildfire mitigation measures taken to protect the individual's private property interest in the fixtures to real property (i.e., fencing, bridging, and other structures on the public land).

(d) *Private Property held by a Legal Entity*. A partnership, S corporation, or other similar legal entity cannot claim the subtraction. However, an individual who holds an easement, leasehold, right-of-way, or estate in real property owned or leased by such legal entity is a landowner because the individual is a landowner (i.e., holds an estate) of private land. Corporations and other similar legal entities are not eligible for this subtraction because § 39-22-104, C.R.S. is available only to individuals, estates, and trusts.

(5) **Wildland-Urban Interface Area / Community Wildfire Protection Plan.** For tax years beginning prior to January 1, 2014, the wildfire mitigation measure must be performed in a wildland-urban interface area and authorized by a community wildfire protection plan, but this requirement does not apply for tax years beginning on or after said date.

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on 05/12/2015

1 CCR 201-2

INCOME TAX

The above-referenced rules were submitted to this office on 05/13/2015 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.

May 18, 2015 11:28:28

Cynthia H. Coffman
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by Frederick R. Yarger
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Permanent Rules Adopted

Department

Department of Revenue

Agency

Division of Motor Vehicles

CCR number

1 CCR 204-12

Rule title

1 CCR 204-12 RULES AND REGULATIONS FOR COMMERCIAL DRIVER'S LICENSE (CDL) 1 - eff 06/30/2015

Effective date

06/30/2015

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, 42-2-114.5, 42-2-406 (3 through 7), 42-2-407(8), C.R.S.

(2) The purpose of these rules is to promote the safety and welfare of the citizens of Colorado by establishing standards and requirements for licensing commercial driver's license testing units and testers, to establish fees for such licensing and maximum fees that may be charged by such testing units, to establish certain procedures and standards for issuing and possessing commercial driver's licenses, and to ensure compliance with state and federal requirements.

B. INCORPORATION BY REFERENCE OF FEDERAL RULES

(1) Adoption: The Department incorporates by reference the Federal Motor Carrier Safety Regulations ("FMCSR"), 49 CFR parts 171, 172, and 300-399, Qualifications and Disqualification of Drivers, 26 USC Section 501(c), and the Colorado Department of Public Safety, Colorado State Patrol, Rules and Regulations Concerning Minimum Standards for the Operation of Commercial Vehicles at 8 CCR 1507.1.

(2) "49 CFR", when referenced in this rule, means the Federal Regulations published in the Code of Federal Regulations ("CFR"), Title 49, parts 171, 172, and 300-399 (October 1, 2014). The Federal rules and regulations referenced or incorporated in this rule, and 8 CCR 1507-1, are on file and available for inspection by contacting the Driver License Section of the Department of Revenue in person at, 1881 Pierce Street, Room 128, Lakewood, Colorado, 80214, or by telephone at 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.

(4) C.R.S.: 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 49 CFR, that a person is no longer qualified to operate a CMV under 49 CFR; or the loss of qualification that automatically follows conviction of an offense listed in 49 CFR.

(6) Designed to Transport: The manufacturer's original rated capacity for 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, and allow the operation of a special configuration of vehicle(s):

(a) T = Double/triple trailers (not allowed on a CLP per 49 CFR

(b) P = CDL Passenger vehicle

(c) N = Tank vehicles

(d) H = Hazardous materials (Not allowed on a CLP per 49 CFR

(e) S = School buses

(f) X = Combination of tank vehicle and hazardous materials (Not allowed on a CLP per 49 CFR

(g) M = Motorcycle (not allowed on a CLP per 49 CFR

(h) 3 = Three wheel motorcycle (not allowed on a CLP per 49 CFR

(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).

(11) CDL Skills Test: Means "driving tests" as referenced in section 42-2-402, C.R.S. 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 with a CDL 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 a state and a place outside of such state (including a place outside of the United States), or between two places in a state through another state or a place 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 any state that is not described in the term "interstate commerce."

(18) Knowledge Test: A written test that meets the federal standards contained in 49 CFR.

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

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

(21) Paved Area: For the purpose of this rule, a paved area is a surface made up of materials and adhesive compounds of a sufficient depth and strength that the area provides a durable, solid, smooth surface upon which an applicant may 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 to 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)

(j) Z = Restricted from operating a CMV with full airbrakes

(24) Self Certification Choice:

- **Non-excepted interstate**. A person's certification that he or she operates or expects to operate in interstate commerce, is both subject to and meets the qualification requirements under 49 CFR, and is required to be medically examined and certified pursuant to 49 CFR.
- **Excepted interstate**. A person's certification 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 from all or parts of the qualification requirements of 49 CFR, and is therefore not required to be medically examined and certified pursuant to 49 CFR.
- **Non-excepted intrastate**. A person's certification that he or she operates only in intrastate commerce and therefore is subject to Colorado driver qualification requirements.
- **Excepted intrastate**. A person's certification must certify that he or she operates in intrastate commerce, but engages exclusively in transportation or operations excepted from all or parts of the Colorado driver qualification.

(25) USDOT: United States Department of Transportation.

(26) CSTIMS: Commercial Skills Test Information Management System. Web-based system used by states to manage the CDL Skills Test portion of the CDL process.

D. DRIVER LICENSING REQUIREMENTS

(1) Each applicant applying for a CDL or CLP must 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. 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 an applicant must test for a hazardous material endorsement and school bus endorsement.

(c) An applicant 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).

(2) Each applicant 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):

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

(3) Each applicant must meet the medical and physical qualifications under 49 CFR. Each applicant must 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).

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 is 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 that hauls 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 pursuant to the hazardous materials regulations.

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

(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 who self-certifies to excepted or not excepted intrastate driving (49 CFR). Under this CDL restriction, the driver must not:

(a) Operate a CMV outside Colorado state boundaries; or

(b) Transport interstate commerce as defined in 49 CFR.

*The waiver from Colorado State Patrol is valid only while the driver is transporting commodities OTHER THAN bulk hazardous materials, as defined in 49 CFR or commodities with a hazard class identified in 49 CFR, or commodities subject to the "Poison by Inhalation Hazard" shipping description in 49 CFR.

(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 CDL Skills Test in a vehicle equipped with air brakes that is representative of the CDL vehicle class.

(b) When taking the CDL Skills Test in a vehicle equipped with air brakes, the applicant must have in his/her immediate 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 CDL Skills Test in a vehicle equipped with a standard transmission that is representative of the CDL vehicle class.

(b) When taking the CDL Skills Test in a vehicle equipped with a standard transmission, the applicant must have in his/her immediate 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).

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

(b) Before taking the CDL Skills Test in a Class A Passenger vehicle, the applicant must have in his/her immediate 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).

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

(b) Before taking the CDL Skills Test in a Class B Passenger vehicle, the applicant must have in his/her immediate possession a CLP 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 5^{th} wheel type coupling system (49 CFR).

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

(b) When taking the CDL Skills Test in a tractor/semi-trailer combination vehicle equipped with a 5th wheel type coupling system, the applicant must have in his/her immediate 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 CDL 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 CDL 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).

(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 CDL Skills Test in a vehicle equipped with air brakes that is representative of the CDL vehicle class.

(b) When taking the CDL Skills Test in a vehicle equipped with air brakes, the applicant must have in his/her immediate possession a CLP without the "Z" restriction.

G. EXEMPTIONS

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

(a) FMCSR – 49 CFR: Exception for individuals who operate CMVs for military purposes.

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

(c) FMCSR – 49 CFR: Exception for drivers employed by an eligible unit of local government, operating a commercial motor vehicle within the boundaries of that unit for the purpose of removing snow or ice from a roadway by plowing, sanding, or salting, if the properly licensed employee who ordinarily operates a commercial motor vehicle for these purposes is unable to operate the vehicle or if the employing governmental entity determines that a snow or ice emergency exists that requires additional assistance.

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

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

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 CMVs owned, leased or registered to the testing unit, the business owner, or an employee of the business;

(b) Maintain an adult education occupational business license with the Division of Private Occupational Schools, 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 must apply for and receive a CDL testing unit license from the Department in order to administer CDL Skills Tests. The CDL testing license expires on June 30th of each year. The licenses for both the testing unit and driving tester(s) must be displayed in the place of business.

(a) Testing unit and driving tester license fees are waived for non-commercial testing units and driving testers that only provide public transportation, and that do not test outside of their unit.

(b) Public transportation entities that test outside of their unit or that do not provide public transportation only, must submit the appropriate fees.

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

(d) Licenses can be renewed up to 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 must only test if they have a current testing unit license issued by the Department.

(4) Testing units must ensure that each driving tester has a valid tester license issued by the Department when he or she administers a CDL Skills Test.

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

(6) A testing unit's place of business must be a separate establishment and may not be part of a home. The unit's physical address must not be a post office box.

(7) The testing unit must 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 must be submitted to the Department for approval prior to testing.

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

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

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

(11) The testing unit must ensure that the unit's driving tester(s) administer the CDL Skills Test to applicants in a vehicle equal to, or lower than, the class and/or endorsement(s) on applicant's instruction permit or CDL.

(12) Once a new tester candidate has passed the required tester training course, the testing unit must 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 driving testers attend all mandated training provided by the CDL Compliance Unit. Failure of driving testers to attend scheduled training may result in the suspension of testing privileges for the testing unit and the tester.

(14) The testing unit must schedule all tests utilizing the Commercial Skills Test Information Management System (CSTIMS). The testing unit or driving tester must 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. The testing unit or driving tester must notify the Department 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 must 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 must ensure that the driving tester only issues the Colorado CDL Driving Skill Test Completion form (DR2736) for the class of vehicle in which the applicant has successfully completed the CDL Skills Test.

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

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

(18) The testing unit must 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 must 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 Tests 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 was an applicant, or the Department may test a sample applicant who was tested by the testing unit to compare pass-fail results;

(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; and

(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 section 42-2-406, C.R.S. A driving tester and a testing unit must only charge for tests administered.

(a) The fees for the administration of the CDL Skills Test for commercial drivers must 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 must 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 must 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 must not exceed one hundred dollars ($100.00).

(21) The testing unit must make all CDL testing records available for inspection during normal business hours.

(22) The testing unit must hold the state harmless from liability resulting from the administration of the CDL program.

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

J. DRIVING TESTER REQUIREMENTS

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

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

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

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

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

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

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

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

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

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

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

(11) The driving tester must administer the CDL Skills Test to applicants in a vehicle equal to or lower in class and/or endorsement(s) than the applicant has on his or her CLP.

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

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

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

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

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

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

(18) The driving tester must inform the applicant that he/she may be randomly selected for a retest as mandated by 49 CFR. The driving tester must ensure that the applicant reads and signs the DR2736 (Colorado CDL Driving Skill Test Completion form).

(19) 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 must be licensed under each unit to conduct testing on its behalf. The driving tester must keep all CDL records separate for each testing unit. License fees must apply.

(20) If an applicant fails any portion(s) of the CDL Skills Test, he or she must return on a different day and perform all three (3) portions of the CDL Skills Test over again.

(21) In order to qualify for renewal, the driving tester must 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.

(22) The driving tester must only issue the Colorado CDL Skills Test Completion form (DR2736) for the class of vehicle in which the applicant has successfully completed the CDL Skills Test.

(23) Upon leaving a testing unit, the driving tester's license may be transferred to another testing unit within three (3) months. If the driver 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 will apply and are the responsibility of the tester.

(24) The driving tester cannot administer the CDL Skills Test to an applicant with whom he/she has conducted in-vehicle skills training.

K. COURSE AND ROUTE REQUIREMENTS

(1) A testing unit must 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 must be used to mark the testing boundaries in accordance with Department standards.

(i) Traffic cones used to mark the testing boundaries must be a minimum of twelve inches in height, and the same size traffic cones must be used for each exercise. Traffic cones must be replaced when they 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 must be cleared of snow, debris, and vehicles that would obstruct the applicant's view during the vehicle control maneuvers.

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

(c) The testing unit must 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 an applicant. The driving tester or testing unit contact person must notify the CDL Compliance Unit if an applicant is refused a test and must 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 CDL Driving Skill Test must be issued the "Colorado CDL Driving Skill Test Completion" form (DR2736). The testing unit and/or driving tester must 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 must be notified in writing after an applicant fails the road test portion of the CDL Driving Skills Test. The testing unit or testers must 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 must maintain all pass/fail records for three years. These must include the CDL Skills Testing records for each applicant tested, the dates of the testing, the applicant's identification information, the vehicle information and the name and state assigned driving tester number for the driving tester who administered the test. If a testing unit is no longer licensed, the unit must 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 must enter all (pass and fail) CDL 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 must cooperate with the Department and/or FMCSA by allowing access to testing areas and routes, furnishing CDL Skills Testing records and results, and providing other items pertinent to the mandated audit and/or inspection. The driving tester must surrender testing records upon request. The driving tester may make copies and retain copies of such records.

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

(7) If the applicant tested in his/her own vehicle, the applicant will supply the vehicle for any CDL Skills Retest.

N. BOND

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

(a) The bond must 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 must be named on the bond as the beneficiary or the bond must be 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, must 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 must execute the bond.

(a) The bond must 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 must be named on the bond as the beneficiary or the bond must be 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 an applicant 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 driving 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 must 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 a 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 will 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 is entitled to a hearing pursuant to section 42-2-407(7), C.R.S. Except as otherwise provided in paragraph (3) of this subsection O, 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.

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

Division of Motor Vehicles

on 05/20/2015

1 CCR 204-12

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

The above-referenced rules were submitted to this office on 05/21/2015 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

May 26, 2015 11:35:36

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

Permanent Rules Adopted

Department

Department of Revenue

Agency

Division of Motor Vehicles

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1 CCR 204-30

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1 CCR 204-30 DRIVER'S LICENSE-DRIVER CONTROL 1 - eff 06/30/2015

Effective date

06/30/2015

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: 12-15-114, 116, and 120, 24-4-103, 42-1-102 (43.5), 42-1-204, 42-1-222, 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.

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 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 a certified Commercial Driving School who is certified by the Department for behind-the-wheel training.

f) **Clock Hours:** Full hour consisting of sixty (60) minutes.

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 license or instruction permit. The aforementioned does not include 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, section 42-2-111(1)(b), C.R.S.

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

(150) APPLICABILITY

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

(200) GENERAL REQUIREMENTS FOR COMMERCIAL DRIVING SCHOOL CERTIFICATION

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

1. Enter into a written contract with the Department;

2. Offer a commercial driver education course of instruction approved by the Department.

b) 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) 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) A CDS's place of business must be a separate establishment and not part of a residence.

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

2. A CDS must request and receive written approval from the Department for record keeping in a residential home office.

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

f) **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 must be reported, in writing, to the Department within 30 days of the change.

g) **Bond:** All CDSs must 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 must 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 BOSTO certification may be suspended. The suspension may continue until satisfactory steps are taken to restore the original amount of the bond.

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

h) **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 must be kept in locked and limited access areas.

2. A CDS must 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 must 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.

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

j) A CDS must notify the Department 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) 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 is grounds for revocation or suspension of CDS certification.

l) To request certification as a CDS, the CDS must complete and submit a Department approved application form.

(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) A CDS must offer a thirty (30) hour commercial driver education course of instruction approved by the Department, except that a CDS that provides only EDAP/DAP training need not offer such 30-hour course, but must meet the requirements in section 303 of this rule.

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

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

e) A CDS must 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.

f) Driver education courses must be equal to or exceed the requirements for hours of instruction (excluding meal times/breaks) and course content as set forth in the Department's application form for CDS certification.

g) 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 teach the approved content or the required number of hours..

b) If a CDS is notified that approval for its course of instruction has been withdrawn, the CDS must 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 must not be part of a home, mobile home, apartment, or living quarters of any kind.

(300) CERTIFIED COMMERCIAL DRIVING SCHOOL OPERATING REQUIREMENTS

a) All CDSs must comply with applicable Colorado revised statutes, Department rules and regulations.

b) All CDSs must cooperate with any investigation of a 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 must 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. provide a CBI background check and a Department approved form with an original signature;

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

3. 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.

g) A CDS must:

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

2. account for all forms in its possession;

3. with each renewal packet, submit on a Department approved form a list of certifications

requested for each tester, a CBI background check and every other year an original signature for each tester;

4. within 10 days of employment submit paperwork on a Department approved form listing the certifications requested (excluding BOSD) for the tester and a CBI background check with an original signature; and

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

h) Signing a form that represents that training/testing has been successfully completed, when a student has not successfully completed the testing/training, 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.

i) 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 8 or more points within a 3-year period, or his/her license has been suspended, revoked, forfeited, or denied, the employee's certification 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.

j) A CDS must notify the Department of the location of all branch offices. Branch opening notices must include copies of the business license(s). 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.

k) A CDS must keep 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.

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

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

n) 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 branch 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 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 required in section 12-15-114 C.R.S.;

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

3. be available for inspection and 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 available for inspection prior to use.

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

c) BTW training must be recorded on a Department approved form, which form must 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 must not be given credit towards his/her 6 hours of BTW; and

e) The CDS must have a 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.

f) For a CDS to become certified to teach BTW, a CDS must submit a curriculum on a Department approved form.

(302) CERTIFIED COMMERCIAL DRIVING SCHOOLS OFFERING INTERNET PROGRAMS

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

b) The curriculum 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 CDSs offering only internet programs must enter into a contract with the Department and be certified as a CDS, and are not eligible to be certified as a BOSTO or basic operator skills tester.

d) All CDSs offering internet programs must maintain an 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 must 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 internet programs approved by the Department must issue a Department Completion Form for 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 new seller must submit a copy of their executed contract to the Department within 10 days of the date on which the contract was fully executed.

h) Each CDS must issue the Driver Testing and Education (DTE) manager and auditor 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. minor permit issuance;

2. behind-the-wheel requirements; and

3. requirements for licensure.

j) Internet programs must 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 embedded 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 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 EDAP/DAP for the purpose of qualifying students for a Colorado minor's instruction permit must be a CDS and except as otherwise provided in subsection 201(b) of this rule, meet CDS curriculum and statutory requirements.

b) An approved 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 a CDS and meet CDS curriculum and statutory requirements.

c) Students must be 15 years and 6 months of age before completing an approved EDAP/DAP

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

(304) ADVERTISING

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

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

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

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

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

(305) CONTRACTS

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

1. CLASSROOM INSTRUCTION: package rate, the available dates or the website where dates can be found, 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 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 must 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 30 hours of curriculum and offers 6 hours of BTW instruction) with the Department may apply for certification as a BOSTO. Testing must be equal to the training and examination offered by 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 BTW completion statements for students under the age of 18 to the Department.

c) BOSTO certifications must be renewed annually before the current certification expires.

d) To renew a BOSTO certification, a CDS must provide documentation 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 have its BOSTO written and drive testing privileges suspended. A CDS may re-apply for testing privileges with their renewal application, if the minimum teaching requirements listed above have been met. A CDS in a rural area 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 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 may have their certification as BOST testers revoked or suspended, and the certification of the BOSTO 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; and

3. each employee seeking training and certification must:

i) be at least 21 years of age; and

ii) have a valid Colorado driver license.

h) All forms submitted for BOSTO certification must 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 CDS as a BOSTO and a CDS's employee as a BOST tester.

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 will be cancelled.

l) A CDS may 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 must 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 may be suspended from BOST drive testing, written knowledge testing or both.

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.

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

t) BOST testers must 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 4 failed attempts;

4. an applicant whose driver license is currently under restraint;

5. an applicant with a valid license requesting a 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 in writing by the Department prior to certification of a CDS as a BOSTO. BOST testers must administer the BOST drive test only on routes approved by the Department for the BOSTO employing the tester. BOSTOs 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 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) BOSTOs are required to maintain copies of approved drive routes in their files.

e) 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 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 BOSTO 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 BOSTOs must hold the State harmless from liability resulting from the BOSTO's administration of the BOST drive test.

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

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 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;

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 as a training vehicle for BTW training or a vehicle provided by the applicant.

n) Prior to administering a BOST drive test, testers must 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 must 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 must be recorded on forms provided by the Department.

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

r) After a drive test is completed, testers must immediately critique the applicant's performance on the test in a location outside of the vehicle. If the applicant is a minor, the critique must 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 must complete the DR2735, Basic Operator's Driving Skills Test completion statement. Tester and applicant must sign the form. Tester must staple the pink copy of the DR2735 to the score sheet (DR2732).

t) BOST testers must 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.

w) A tester must not administer more than one complete driving test per day to any applicant. Giving an applicant more than one test per day may result in 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 the vehicle when an audit is being performed for quality assurance purposes.

2. Another BOST tester may be in the 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 must 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. must administer and proctor tests only at an established place of business;

2. must ensure that applicants do not access any unauthorized assistance, including but not limited to, written material, cell phones, or electronic devices, or communicate with any unauthorized person while testing;

3. must require applicants to write their first and last name(s), date of birth, and the date of the test in the information box provided on the BOST written knowledge test and interpreters, including BOST testers acting as an interpreter, must write their first and last name(s) and driver license number on the back of the test;

4. must require a correct score of 80% or higher to pass;

5. must grade correctly using the score key and a red pen;

6. must provide up to four tests per applicant in total, and no more than two per day. If an applicant fails four written tests, all subsequent tests must be taken at a Department driver license office; and

7. must ensure that if an applicant fails the first test with the BOST organization, then the second test must be a different version than the first test. If an applicant misses more than 50% of the questions on a first test attempt, the applicant must wait until the next day to test again.

c) Applicants may use an interpreter for the written test. Any interpreter must be arranged for by the applicant and any cost associated with the use of an interpreter is the responsibility of the applicant.

d) An interpreter must be at least 16 years old and show an unexpired driver license from any state in the United States.

e) The BOST tester or other interpreter can interpret in the required language and can only interpret the questions and answer choices.

f) The BOST written knowledge test must not be given to any applicant under the age of 14 years and 11 months.

g) BOST written knowledge tests must not be used as “practice” or “pre” tests.

h) 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.

i) Written completion statements must not be partially or fully completed until after a student has completed and passed the written test.

j) BOST testers administering the written knowledge test must periodically check with the Department to confirm they have the most current version of tests/keys.

k) Tests must be proctored and graded by a BOST tester with a BOSW certification.

l) 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 must administer a minimum of 24 drive tests per year. Failure to complete the minimum number of tests may result in suspension of a tester's certification.

b) All BOST testers must have had a valid driver license for at least 4 years and be at least 21 years of age.

c) 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 may result in suspension of a tester's certification until continuing education has been successfully completed. Proof of continuing education must be kept by a BOSTO in the tester's file for periodic review by the Department.

d) 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.

e) 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 tests (all within 3 errors as documented by another certified tester); and

3. must complete all shadow drives within 6 weeks of passing the BOST training class.

f) 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 BOSTO for at least a year.

g) Applicants failing the BOST drive test with a BOST tester must only be re-tested by a different BOST tester (unless the Department determines that this would be a hardship).

h) An expired completion statement, DR 2735 form (after 180-days) will require the applicant to retake the test.

(500) RECORDKEEPING AND REPORTING

a) CDSs and BOSTOs must use only the Department's forms and must account for all control numbered forms issued to them.

b) Issued forms must be used in control number order. Each series of assigned completion statements must be completed before a new series is started.

c) Audited records must be stored securely for a period of three years. Records include all contracts, records of student enrollment, BTW logs, written tests, drive test score sheets, progress reports, student completion statements, and control numbered forms issued by the Department.

d) Student/parent contracts, progress reports and student enrollment records may be stored electronically after they have been audited.

e) After three years all testing records must be shredded.

f) All forms issued, including those for passed and failed examinations, must be logged on a CDS's and BOSTO's monthly report.

g) CDSs and BOSTOs must submit monthly reports on Department approved forms. Reports must 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.

h) 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 for drive and written tests must be dated using the same date as the original form.

i) 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.

j) CDSs, BOSTOs, and testers are responsible for securing both blank and completed forms.

k) Post-dating, pre-dating, or partial completion of any form is not allowed.

(600) AUDITING

a) CDSs must 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 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. 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 all required documentation to the Department upon request. The CDS/ BOST tester may make copies and retain copies of such documentation.

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 BOSTOs continue to meet the standards established by the Department, a Department representative will conduct on-site 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. 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, CDSs and BOSTOs must 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) CDS 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 a CDS's or BOSTO's certification not being renewed 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 CDS or BOSTO submitting the application.

e) Renewal applications must include a breakdown of the costs of each package offered by the CDS or BOSTO.

(800) SUSPENSION/ REVOCATION/ CESSATION OF BUSINESS

a) CDSs and BOSTOs 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 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 previous audit may

result in suspension of certification. Failure of the Department to take action based on an audit does not waive the Department's authority to take action later based on that audit.

e) A CDS or BOST tester who supplies false information to the Department may 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 result in the suspension and/or revocation of BOST certification.

f) 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) 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.

h) 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) If an applicant's testing was improper, illegal, or fraudulent, the applicant may have his/her driver license canceled.

j) The Department may issue a summary suspension to any CDS, BOSTO, or BOST tester if the Department has 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 shall serve as notice to immediately cease testing and training until an investigation or hearing is complete.

k) Upon receipt of a summary suspension, a CDS, BOSTO, and/or BOST tester must immediately stop all BOST testing and/or training. Proceedings for a suspension or revocation shall be promptly instituted and determined. The decision of the Department's Hearings Division constitutes final agency action.

l) 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) 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 BOSTOs 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.

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Tracking number: 2015-00202

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

Division of Motor Vehicles

on 05/20/2015

1 CCR 204-30

DRIVER'S LICENSE-DRIVER CONTROL

The above-referenced rules were submitted to this office on 05/21/2015 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

May 26, 2015 11:36:05

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

Permanent Rules Adopted

Department

Department of Revenue

Agency

Lottery Commission

CCR number

1 CCR 206-1

Rule title

1 CCR 206-1 LOTTERY RULES AND REGULATIONS 1 - eff 06/30/2015

Effective date

06/30/2015

DEPARTMENT OF REVENUE

Lottery Commission

1 CCR 206-1 RULES AND REGULATIONS

RULE10.E COLORADO LOTTERY JACKPOT GAME, "CASH 5" - "EZ MATCH™" OPTION

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™" option 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 at the discretion of 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.D.2 of Rule 10.D.

10.E.3 Price of "EZ MATCH™"

A. The price of each "EZ MATCH™"" play selected shall be $1.00.

B. A player using a playslip can select the option of "EZ MATCH™" or a licensee can manually enter the selection of "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

10.E.4 Ticket Purchases

"CASH 5" tickets with the "EZ MATCH™" option 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™" option shall show, at a minimum, the player's selection of numbers, the boards played, drawing date, validation and reference numbers, "EZ MATCH™" Instant Win numbers and "EZ MATCH™" Instant Win 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™" option. If the purchaser chooses the "EZ MATCH™" option for the ticket, the additional cost for each "CASH 5" board will be $1.00. (See Paragraph 10.E.3 of this Rule 10.E for detailed "EZ MATCH™" 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 "CASH 5" ticket and select the "EZ MATCH™" option will receive one (1) ticket per board purchased.

D. "CASH 5" tickets with the "EZ MATCH™" option cannot 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™" option is effective only for players who choose the "EZ MATCH™" option at time of purchase and pay an additional $1.00 per board.

A. Tickets with the "EZ MATCH™" option will display five (5) randomly selected numbers below the "CASH 5" board purchased in an "EZ MATCH™" option play area of the "CASH 5" ticket.

B. Each of the five (5) "EZ MATCH™" option numbers will have a prize value randomly assigned.

C. If one or more of the "EZ MATCH™" option numbers matches (is the same as) one or more of the numbers displayed in the "CASH 5" board the EZ Match option is an instant winner.

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 with the numbers displayed in the "CASH 5" board.

B. Players can match 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	Odds (within group of 84,000)	Expected Number of Winners / Grid	Prize per Winner	Prize Percentage	Payout Percentage
1	1 : 42,000	2	$500	1.95%	1.19%
2	1 : 42,000	2	$250	0.97%	0.60%
3	1 : 21,000	4	$100	0.78%	0.48%
4	1 : 2,800	30	$50	2.92%	1.79%
5	1 : 1,680	50	$20	1.95%	1.19%
6	1 : 840	100	$15	2.92%	1.79%
7	1 : 168	500	$10	9.75%	5.95%
8	1 : 105	800	$5	7.80%	4.76%
9	1 : 76	1100	$4	8.58%	5.24%
10	1 : 17	5000	$3	29.24%	17.86%
11	1 : 10	8500	$2	33.14%	20.24%
	1 : 5.22	16,088		100%	61.07%

10.E.7 Prize Payment

A. "EZ MATCH™” option instant wins will be paid separately from any “CASH 5” wins on the associated “CASH 5” board for tax reporting purposes.

B The "EZ MATCH™” option instant win ticket may be redeemed for payment immediately. If a winning "EZ MATCH™” option ticket is presented prior to the associated “CASH 5” drawing occurring a “CASH 5” exchange ticket will be generated.

B. The "EZ MATCH™” option instant win ticket may be held until after the drawing for which the “CASH 5” ticket was purchased.

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” advance play tickets may also purchase the "EZ MATCH™” option. If an advance play “CASH 5” ticket is purchased with the “EZ MATCH” option, the option only applies to the original purchase for an instant win. “EZ MATCH” does not apply to, or affect, any “CASH 5” advance play win. If an advance play “CASH 5” ticket is redeemed when there are remaining draws the exchange ticket that is produced will not contain the “EZ MATCH™” option.

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Tracking number: 2015-00172

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

Lottery Commission

on 05/13/2015

1 CCR 206-1

LOTTERY RULES AND REGULATIONS

The above-referenced rules were submitted to this office on 05/14/2015 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.

May 18, 2015 11:21:46

Frederick R. Yarger

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

Permanent Rules Adopted

Department

Department of Revenue

Agency

Lottery Commission

CCR number

1 CCR 206-1

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1 CCR 206-1 LOTTERY RULES AND REGULATIONS 1 - eff 06/30/2015

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06/30/2015

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

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"

A. 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

B. 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® OPTION” 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

A. 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.

B. The “POWERBALL®” “POWER PLAY® OPTION” drawings shall be held twice each week on Wednesday and Saturday.

C. 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® OPTION" prize amounts for that drawing. If a “POWERBALL®” drawing is not certified, the “POWER PLAY® OPTION” number for the drawing defaults to “5”.

D. "POWER PLAY® OPTION" 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%

E Each "POWER PLAY® OPTION" 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.

F. The drawing shall not be invalidated due to the multiplier drawn creating an excessive prize liability for the Lottery.

G. All "POWER PLAY® OPTION" drawings shall be open to the public.

H. 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.Bof 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.C.2.c 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. 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. 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 adding the ”POWER PLAY® OPTION” to a “POWERBALL®” 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® Option” Promotion

With the Lottery Commission’s and Director’s approval, the Lottery will from time to time participate in a “POWERBALL®” “POWER PLAY® OPTION” promotion (i.e. a ten times (10X) multiplier for a limited promotion). The times and dates of the “POWERBALL®” “POWER PLAY® OPTION” promotion will be announced by the MUSL board in conjunction with existing rules and regulations pertaining to “POWERBALL®”.

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

Lottery Commission

on 05/13/2015

1 CCR 206-1

LOTTERY RULES AND REGULATIONS

The above-referenced rules were submitted to this office on 05/19/2015 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.

May 26, 2015 11:33:29

Frederick R. Yarger

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

Permanent Rules Adopted

Department

Department of Revenue

Agency

Lottery Commission

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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

A. 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.

B. 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.

C. 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.

D. 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. "Advance Play" means the ability to purchase tickets for more than one drawing.

B. "Breakage" means the results of rounding prize amounts down to the nearest whole dollar.

C. "Drawing" means the event that occurs wherein the official "POWERBALL®" numbers are drawn.

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. "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. "Grid" means the area of a play slip that contains a set of numbered squares to be marked by the player.

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. "MUSL" means the Multi-State Lottery Association, a government-benefit association wholly owned and operated by the Party Lotteries.

I. "MUSL Board" means the governing body of MUSL, which is comprised of the chief executive officer of each Party Lottery.

J. "Number" means any play integer from one (1) through fifty-nine (59) inclusive.

K. "Play" means the six (6) numbers selected on each Board and printed on the ticket.

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. "Prize Amount" means the pari-mutuel and/or set prize values established for a game.

N. "Prize Category" means and refers to a specific prize within the prize pool.

O. "Prize Pool" means a defined percentage of sales as specified in this rule.

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. "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. "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. "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. "Share(s)" means the total number of matching combinations within each prize category as determined for each drawing.

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. "POWERBALL®" tickets may be purchased only from a Lottery licensee authorized by the Director to sell multi-state Jackpot Game tickets.

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. 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. 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 "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. 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	PRIZECATEGORY	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

B. 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%

C. Prize Categories - The Grand Prize shall be determined on a pari-mutuel basis. Except as provided in c. 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:

   a. The amount available in the set prize payout variance account.

   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.

   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. 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. 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. 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. 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. 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.

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. 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.

C. 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.

D. 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.

E. 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.

F. 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.

G. 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. 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. 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. 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. 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. 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. The Grand Prize amount held by MUSL for subsequent payment to annuity winners shall be transferred to the Lottery within seven days preceding 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. 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. 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. 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. The drawing shall not be invalidated due to the numbers drawn creating an excessive prize liability for the Lottery.

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. 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. 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. 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. 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:

   a. A licensee must have sold a grand-prize 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;

   b. Payment of the jackpot-selling bonus will occur once Lottery security has confirmed the selling licensee.

   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.

   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:

   a. A licensee must be licensed on the date the marketing performance bonus is declared;

   b. A licensee must sell Lottery products up to and including on the final sales day in which the marketing performance bonus is declared;

   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. In the event there is a residual resulting from the accrual of the one percent (1%) cashing bonus (14.A.14.A.1) and/or the five-tenths of one percent (.5%) marketing bonus (14.A.14.A.3) have been expensed, the Lottery Director may provide additional compensation to licensees as described in 14.A.14.A.2 or may revert the excess amount thereby decreasing the bonus expense.

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Tracking number: 2015-00174

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

Lottery Commission

on 05/13/2015

1 CCR 206-1

LOTTERY RULES AND REGULATIONS

The above-referenced rules were submitted to this office on 05/19/2015 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.

May 26, 2015 11:43:29

Frederick R. Yarger

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

Permanent Rules Adopted

Department

Department of Revenue

Agency

Division of Gaming - Rules promulgated by Gaming Commission

CCR number

1 CCR 207-1

Rule title

1 CCR 207-1 GAMING REGULATIONS 1 - eff 07/01/2015

Effective date

07/01/2015

BASIS AND PURPOSE FOR RULE 3

The purpose of Rule 3 is to establish and provide the specific information required on license applications; to establish yearly license fees for each type of license; to establish nonrefundable application fees; to establish investigation fees for certain applicants and deposit procedures for investigation fees; to establish procedures for conducting background checks on applicants and other interested persons and assessing the costs of such background checks; to require certain information regarding the premises the applicant wishes to be licensed, and to provide a procedure for approval of modifications of such premises; and to provide for the issuance of conditional, temporary, and duplicate licenses. The statutory basis for Rule 3 is found in sections 12-47.1-102, C.R.S., 12-47.1-103, C.R.S., 12-47.1-201, C.R.S., 12-47.1-203, C.R.S., 12-47.1-302, C.R.S., and part 5 of article 47.1 of title 12, C.R.S. *Amended 1/14/15*

RULE 3 APPLICATIONS, INVESTIGATIONS AND LICENSURE

47.1-303 License fees.

A non-refundable license fee for a two-year license must accompany an application for licensure in the following amounts: *Eff 08/06/2008*

(1)	Original and renewal Type 1 slot machine manufacturer or distributor license	$3,700.00
(2)	Original and renewal Type 2 slot machine manufacturer or distributor license	$7,400.00
(3)	Original and renewal Type 1 associated equipment supplier license	$3,700.00
(4)	Original and renewal Type 2 associated equipment supplier license	$7,400.00
(5)	Original and renewal Type 1 operator license	$3,700.00
(6)	Original and renewal Type 2 operator license	$7,400.00
(7)	Original and renewal Type 1 retail gaming license	$5,500.00
(8)	Original and renewal Type 2 retail gaming license	$8,000.00
(9)	Original key employee license	$275.00
(10)	Original support employee license	$115.00
(11)	Renewal key employee license	$215.00
(12)	Renewal support employee license	$70.00

(47.1-303(6 & 7) temp. 06/21/95, perm. 10/30/95) (47.1-303 temp. 7/1/96 perm. September 30, 1996, 47.1-303 (5 & 7) amended temp 07/01/00 perm 07/30/00) *Eff 08/06/2008, Amended 11/30/2012, Amended 2/14/14*

47.1-325 Variation games of poker, blackjack, craps, roulette, blackjack-poker combination games and table games with electronic betting terminals. *Amended 3/16/2012, Amended 1/14/2015*

(1) Persons requesting approval of variation games of poker, blackjack, craps, roulette, blackjack-poker combination games and table games with EBTs, shall pay a fee of $2,250.00 for costs of inspection, examination, and evaluation of the game and for drafting regulations and Internal

Control Minimum Procedures governing play and control of such game. *Amended 3/16/2012, Amended 1/14/2015*

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

Division of Gaming - Rules promulgated by Gaming Commission

on 05/21/2015

1 CCR 207-1

GAMING REGULATIONS

The above-referenced rules were submitted to this office on 05/21/2015 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

May 26, 2015 11:36:43

Cynthia H. Coffman
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Permanent Rules Adopted

Department

Department of Education

Agency

Colorado State Board of Education

CCR number

1 CCR 301-3

Rule title

1 CCR 301-3 FOOD AND NUTRITION SERVICES 1 - eff 06/30/2015

Effective date

06/30/2015

DEPARTMENT OF EDUCATION
Colorado State Board of Education
FOOD AND NUTRITION SERVICES
1 CCR 301-3
[Editor's Notes follow the text of the rules at the end of this CCR Document.]

2202-R-200.00 Basis and Purpose

200.01 The basis of these rules is found is Section 22-2-107(1)(c), C.R.S. and the purpose of these rules relating to food and nutrition services are:

To preserve and protect the nutritional integrity of food and nutrition service operations in school districts, recognizing the proven link between nutrition and a child's ability to learn, as well as to foster the Declaration of Policy and Purpose set forth in the Richard B. Russell National School Lunch Act (42 U.S.C., 1751 Et. Seq.) and the Child Nutrition Act of 1966 (42 U.S.C., 1771 Et. Seq.), as amended, and;

To assist district food and nutrition service operations in complying with federal and state law and regulations pertaining to such operations.

The purpose for the 2015 amendments are to streamline and consolidate these rules including incorporating the rules related to the food service fund into 1 CCR 301-11 Rules for Accounting and Reporting. Additionally, the 2015 amendments include clarifications to assist school districts in complying with federal and state law and regulations pertaining to food and nutrition service operations.

2202-R-201.00 Competitive Food Service

201.01 In those schools participating in the School Breakfast and/or National School Lunch Program(s), competitive food service is any food or beverage available to students that is separate from the district's nonprofit federally reimbursed food service program, and is provided by a school-approved organization or by a school-approved outside vendor.

201.02 Competitive food service, except as outlined in Section 201.03, shall not operate in competition with the district's food service program. Such competitive foods cannot be sold 30 minutes before to 30 minutes after each scheduled meal service on any area of the school campus that is accessible to students.

201.03 The restriction in Section 201.02 does not apply to the service of competitive, mechanically-vended beverages offered to students at the senior high level.

201.04 As stated in Section 22-32-136(4), C.R.S., each district's board of education is encouraged to establish rules specifying the time and place at which competitive foods may be sold on school property in order to encourage the selection of healthful food choices by students.

2202-R-202.00 Records

202.01 Records must be kept in such a way as to substantiate the claims of the district and meet the requirements of the USDA. At a minimum, all records pertaining to the federal child nutrition programs, including claims, financial records and supporting documentation, must be retained for a period of three years after the end of the federal fiscal year (October 1 through September 30) to which they pertain.

202.02 Records pertaining to the Public School Finance Act of 1996, including direct certification listings, applications for free and reduced price school meals, family economic data survey forms, district listings of migrant,

homeless, runaway or foster students, and Head Start documented participation must be retained until audited by CDE or until five years from the certification due date whichever comes first.

2202-R-203.00 Food Service Management Companies

203.01 Districts and school food authorities may contract for the services of a food service management company (FSMC).

203.02 School food authorities wishing to enter into a FSMC contract must comply with all federal rules and regulations pertaining to such FSMC contracts.

203.03 To ensure compliance with state and federal requirements relating to contracting with FSMC's, school food authorities must utilize the request for proposal (RFP) and contract prototypes and procedures as provided by CDE.

203.04 All RFP documents must be approved by CDE prior to release of the RFP. All contracts must be approved by CDE prior to the inception of the contract.

203.05 The school food authorities must maintain control of meal prices, and retain signature authority on all agreements, reimbursement claims, free and reduced price policy implementation, and any other required forms and reports.

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1 CCR 301-3

FOOD AND NUTRITION SERVICES

The above-referenced rules were submitted to this office on 05/18/2015 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.

May 26, 2015 11:38:06

Cynthia H. Coffman
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Permanent Rules Adopted

Department

Department of Education

Agency

Colorado State Board of Education

CCR number

1 CCR 301-11

Rule title

1 CCR 301-11 AMENDMENTS TO THE RULES FOR ACCOUNTING AND REPORTING 1 - eff 06/30/2015

Effective date

06/30/2015

DEPARTMENT OF EDUCATION
Colorado State Board of Education
RULES FOR ACCOUNTING AND REPORTING
1 CCR 301-11
[Editor's Notes follow the text of the rules at the end of this CCR Document.]

Adopted: 10-2-75, 11-12-92, 12-9-93, 3-6-08
Attorney General Opinion: 11-21-75, 12-15-92, 12-17-93
Statutory Authority: 22-45-101, 22-45-102, 22-45-103, 22-30.5-104, 22-30.5-503, 22-2-107(l)(c), 22-30.5-603, 22-44-206, C.R.S.

2245-R-1.00 Applicability.

The rules stated herein shall apply to Colorado public school districts, the charter school institute, charter schools, charter school collaboratives, and boards of cooperative educational services.

2245-R-2.00 No Tax Authority.

Establishment of a fund under these rules confers no authority to levy a tax for the purpose of the fund, except as otherwise established by statute.

2245-R-3.00 Funds and Accounts Structure.

The local board of education shall establish within the funds and accounts structure stated herein those local school district funds and accounts necessary to meet legal requirements, Colorado Department of Education (CDE) reporting requirements, and generally accepted principles of governmental accounting. In addition to the funds created in statute (Section 22-45-103, C.R.S.), the following funds are available for school district financial accounting and reporting.

3.01 Charter school fund. Used to track revenues and expenditures of charter schools. The district is not required to include charter school transactions in its financial database for normal day to day operations. However, charter school transactions must be included in the district's database in the financial reporting system pursuant to Section 22-44-105(4)(a), C.R.S. for reporting purposes.

3.02 Colorado Preschool Program (CPP) Sub-Fund of the General Fund. An optional fund, if used, this fund allows a district to separate the CPP accounting, and maintain a self-balancing set of records specific to the CPP requirements for allocations. Used to account for the purposes and limitations specified by Section 22-28-108(5.5), C.R.S.

3.03 Special Revenue Funds. The special revenue funds established by the local board of education are used to account for the proceeds of specific revenue sources, other than debt service or capital projects, that are legally restricted or committed to expenditure for specified purposes. Governmental designated-purpose grants may be accounted for in special revenue funds. The general fund portion of blended component units may be accounted for in special revenue funds.

3.03(1) Food Service Funds. A separate fund shall be maintained for the food service program, in order to identify all allowable and reportable expenditures and revenues related to the federal grant program.

3.03(2) The food service fund is a special revenue fund that shall be used to account for all reportable and allowable revenues, expenditures, and other sources and uses of food service transactions funded in part or in whole through the United States Department of Agriculture programs including, but not limited to: School Breakfast Program (CFDA 10.553); National School Lunch Program (CFDA 10.555); Special Milk Program for Children (CFDA 10.556); Summer Food Service Program for Children (CFDA 10.559); and Federal Fresh Fruit and Vegetable Program (CFDA 10.582) as well as food service transactions funded in part or in whole through the State of Colorado including, but not limited to: Start Smart Nutrition Program; Breakfast After the Bell Nutrition Program; and Child Nutrition School Lunch Protection Program.

3.03(3) A school food authority must use the food service special revenue fund for all food service transactions. A district that is not a school food authority must not use the food service special revenue fund.

3.03(4) As stated in Section 22-32-120, C.R.S., the food service fund shall be operated as nearly as practicable on a nonprofit basis. Districts are encouraged to consider the appropriate levels of reserves in the food service fund through the budget process in consultation with the district official responsible for the operation of the district's food service program participating in the School Breakfast and/or National School Lunch Program(s).

3.03(5) Food service funds shall not be used to pay salaries or wages for dining room supervision.

3.03(6) For each school year, indirect costs or direct charging of indirect cost items may be recovered from the food service fund, but shall be limited to that amount established by the approved unrestricted indirect cost rate as determined by CDE under the federal indirect cost rate agreement.

3.03(7) Capital equipment purchases must be made based upon the CDE approved equipment list or prior approval process. As stated in Section 22-32-120(2), C.R.S., capital outlay and equipment rental costs shall not be included in computing the cost of reimbursable school meals served.

3.03(8) Net cash resources must be limited to three months average expenditures based upon a nine-month operating year. Net cash resources is defined as current assets less current liabilities, except that current assets shall not include the value of inventories and prepaid expenditures for the purpose of computing net cash resources.

3.03(9) As stated in Section 22-32-120(1)(a), C.R.S., food service facilities shall be deemed to be an integral part of the district and shall be maintained, operated and governed in the same manner as the schools of the district. As such, expenditures including but not limited to new kitchens with new equipment related to new school construction and to major renovations of school facilities are the responsibility of the district from other district funding sources.

3.03(10) Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year must remain in the funds, shall be used for the support of the food service program pursuant to these rules, and shall not be used for any other purpose.

3.04 Pupil Activity Funds. The pupil activity funds may be used to account for revenues and expenditures related to school-sponsored pupil activities supported by revenues from pupils, gate receipts, or fund-raising sources. The pupil activity funds are accounted for as special revenue funds or fiduciary (trust and agency) funds, depending on their purpose and source of funding.

3.05 Building Fund. The building fund shall be used to account for the proceeds of bond sales, revenues from other sources, and capital expenditures for land or existing buildings, improvements of grounds, or replacement of

equipment as authorized by the local board of education. The building fund is accounted for as a capital projects fund.

3.05(1) Proceeds from the sale of bonds remaining after the completion of the project for which such bonds were authorized may be transferred to the bond redemption fund or in the event all bonds have been redeemed, to the general fund.

3.06 Enterprise Fund. Enterprise funds may be used to account for revenues and expenses for activities that are financed and operated in a manner similar to private business enterprises.

3.07 Internal Service Fund. The internal service funds may be used to account for the financing of goods or services provided by one department or agency to other departments or agencies of the school district, or to other school districts, on a cost-recovery basis.

3.08 Fiduciary (Trust and Agency) Funds. The trust and agency funds may be used to account for money and property held by the school district in a trustee capacity or as an agent for individuals, private organizations, and/or other governmental units.

3.08(1) A private-purpose trust fund may be used to report any trust arrangement under which the principal and/or income benefit individuals or organizations and the funds are not used as part of the operations of the district.

3.08(2) An agency fund may be used to account for assets held for other governments, private organizations, or individuals. Agency funds generally serve as clearing accounts.

3.09 Permanent fund. The GASB 34 permanent fund is a governmental fund type used to report resources that are legally restricted to the extent that only earnings, and not principal, may be used for purposes that support the reporting government's programs.

3.10 Foundations. The district will report foundation activity in fund 85 in the financial reporting system pursuant to Section 22-44-105(4)(a), C.R.S., and will indicate that the audit reflects this activity in a specific fund based on the purpose of the foundation.

3.11 Certificate of Participation (COP) Debt Service Fund. A debt service type fund may be established to allow school districts to account for the accumulation of resources and payment of principal, interest, and related expenses on any COP debt.

2245-R-4.00 Statement of Basis and Purpose.

Conforms these regulations to the Accounting and Reporting Law and the School District Budget Law, as amended through the 2007 legislative session. The basis for these rules is found in Article 2 of Title 22, Article 30.5 of Title 22 and Article 45 of Title 22.

4.01 Statement of Basis and Purpose. The basis for these rules is found in C.R.S. Article 45 of Title 22, Accounting and Reporting; Article 30.5 of Title 22, Charter Schools, as well as in Section 22-2-107(l)(c) which relates to the duties of the state board of education. The Accounting and Reporting law identifies eight funds to be used by school districts in financial accounting and reporting and specifies conditions and requirements regarding the use of these funds. The funds are: General Fund, Bond Redemption Fund, Capital Reserve Fund, Special Building and Technology Fund, Risk Management Reserves, Transportation Fund, Preschool and Kindergarten Program Fund, and Full-day Kindergarten fund.

Article 45 allows the authorization through regulation of additional funds by the state board of education. These regulations authorize nine additional funds for use by school districts in financial management and reporting. Generally accepted principles of governmental accounting permit the use of these funds.

4.02 Statement of Basis and Purpose amendments. The 2010 changes to the rules are due to statutory amendments in HB 08-1388 and SB 10-161, modifications to Governmental Accounting Standards (Statement No. 54), and procedural changes by the U.S. Department of Agriculture (elimination of the separate commodity coding).

The Accounting and Reporting law identifies seven funds to be used by school districts in financial accounting and reporting and specifies conditions and requirements regarding the use of these funds. The funds are: General Fund, Bond Redemption Fund, Capital Reserve Fund, Special Building and Technology Fund, Risk Management Reserves, Transportation Fund, and Full-day Kindergarten Fund.

Article 45 allows the authorization through regulation of additional funds by the state board of education. These regulations authorize ten additional funds for use by school districts in financial management and reporting. Generally accepted principles of governmental accounting permit the use of these funds.

4.03 Statement of Basis and Purpose for Amendments. The 2012 amendment to these rules are in response to recommendations from the Financial Policies and Procedures Advisory Committee to designate a Debt Service Type Fund that will allow school districts to account for the accumulation of resources and payment of principal, interest, and related expenses on any non-voter approved debt.

4.04 Statement of Basis and Purpose for Amendments. The 2015 amendments to these rules are in response to recommendations from the Financial Policies and Procedures Advisory Committee to change the food service fund from an enterprise fund to a special revenue fund. Additionally, the 2015 amendments incorporate rules related to the food service fund which were previously included in 1 CCR 301-3 Food and Nutrition Services into these rules and makes appropriate updates and clarifications to assist school districts in complying with federal and state law and regulations pertaining to food and nutrition service operations and to preserve and protect the fiscal integrity of food and nutrition service operations in school districts.

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Tracking number: 2015-00162

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

Colorado State Board of Education

on 05/13/2015

1 CCR 301-11

AMENDMENTS TO THE RULES FOR ACCOUNTING AND REPORTING

The above-referenced rules were submitted to this office on 05/18/2015 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.

May 26, 2015 11:38:30

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

Permanent Rules Adopted

Department

Department of Education

Agency

Colorado State Board of Education

CCR number

1 CCR 301-92

Rule title

1 CCR 301-92 RULES FOR THE ADMINISTRATION OF THE COLORADO READING TO ENSURE ACADEMIC DEVELOPMENT ACT (READ ACT) 1 - eff 06/30/2015

Effective date

06/30/2015

RECOMMENDED REVISIONS 4.20.15

DEPARTMENT OF EDUCATION

Colorado State Board of Education

RULES FOR THE ADMINISTRATION OF THE COLORADO READING TO ENSURE ACADEMIC DEVELOPMENT ACT (READ ACT)

1 CCR 301-92

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

1.00 Statement of Basis and Purpose.

These rules are promulgated pursuant to Colorado Revised Statutes section 22-2-107 (1) (c) and section 22-7-1209 (1) (a) (e). Section 22-2-107 (1) (a), (c), C.R.S., authorizes the State Board of Education to perform all duties delegated to it by law and to promulgate and adopt policies, rules, and regulations concerning general supervision of the public schools, the Department, and the educational programs maintained and operated by all state governmental agencies for persons who have not completed the twelfth-grade level of instruction. Section 22-7-1209 (1) (a) (e), C.R.S., requires the Colorado State Board of Education to promulgate Rules for the Administration of the Colorado Reading to Ensure Academic Development Act (the Colorado READ Act).

These rules have been revised pursuant to sections 22-2-107(1)(c), C.R.S., and section 22-7-1209(1)(a)(e), C.R.S., requiring the Colorado State Board of Education to promulgate Rules for the Administration of the Colorado Reading to Ensure Academic Development Act (the Colorado READ Act). The revisions clarify how a significant reading deficiency may be determined.

2.00 Definitions.

2.01 Advisory: Recommendations made by the Colorado Department of Education that meet the requirements for scientifically based reading research or evidence-based. These may include but are not limited to the topics of classroom resource materials, instructional programming, interventions, and professional development.

2.02 Body of Evidence: A collection of information which, when considered in its entirety, documents the level of a student's academic performance. A body of evidence, at a minimum, shall include scores on formative or interim assessments and work that a student independently produces in a classroom, including but not limited to the school readiness and READ assessments adopted by the State Board. A body of evidence may also include scores on summative assessments.

2.03 Comprehension: The process of extracting and constructing meaning from written texts. Comprehension has three key elements: (1) the reader; (2) the text; and (3) the activity.

2.04 Department: The Colorado Department of Education created pursuant to section 24-1-115, C.R.S.

2.05 Diagnostic Assessment: A State Board approved assessment which Schools are required to use for students identified through screening as possibly having a significant reading deficiency so as to pinpoint a student's specific area(s) of weakness and provide in-depth information about students' skills and instructional needs.

2.06 Duration: The length (number of minutes) of a session multiplied by the number of sessions per school year.

2.07 Enrollment: For the purposes of the READ Act, enrollment refers to the student's first day of school.

2.08 Explicit Instruction: Instruction that involves direct explanation in which concepts are explained and skills are modeled, without vagueness or ambiguity. The teacher's language is concise, specific, and related to the objective, and guided practice is provided.

2.09 Evidence-Based: The instruction or item described is based on reliable, trustworthy, and valid evidence and has demonstrated a record of success in adequately increasing students' reading competency in the areas of phonemic awareness, phonics, vocabulary development, reading fluency, including oral skills, and reading comprehension.

2.10 Fidelity: The delivery of instruction in the way in which it was designed to be delivered.

2.11 Fluency: The capacity to read words in connected text with sufficient accuracy, rate, and prosody to comprehend what is read.

2.12 Frequency: How often an intervention occurs used within a Response to Intervention framework. Frequency of an intervention, in conjunction with intensity, fidelity of delivery, and duration, may be used as an element to determine the effectiveness of an intervention.

2.13 Intervention: The practice of providing scientifically-based, high-quality instruction and progress monitoring to students who are below proficient in reading.

2.14 Instructional Programming: Scientifically based or evidence based resources in reading instruction that local education providers are encouraged to use including but not limited to interventions, tutoring, and instructional materials that adequately teach students to read and may include materials used within a multi-tiered system of support including the universal/core level and supplemental and intensive interventions.

2.15 Intensity: More time daily above and beyond 90+ minutes of universal (Tier 1) instruction, which is focused on the specific needs of the student as identified by a diagnostic measure. Instruction can be intensified in three ways: (1) more time, (2) more targeted instruction, and (3) smaller group size.

2.16 Interim Assessment: An assessment that occurs multiple times throughout the academic year through which teachers can determine strengths and weaknesses of students that otherwise may have gone unnoticed and which support teachers in making instructional decisions.

2.17 Judicious Review: A review of previously learned information over time, integrated into more complex tasks, in order to enhance the learning of new skills.

2.18 Local Education Provider: A school district, a board of cooperative services, a district charter school, or an institute charter school.

2.19 Mastery: A student can successfully perform, apply, and transfer their knowledge of the task at least 85% of the time.

2.20 Oral Language: The ability to produce and comprehend spoken language, including vocabulary and grammar.

2.21 Phonemic Awareness: A subset of phonological awareness in which listeners are able to hear, identify, and manipulate phonemes, the smallest units of sound that can differentiate meaning.

2.22 Phonological Awareness: Awareness of the sound structure of spoken words at three levels: (1) syllable, (2) onset and rime, and (3) phoneme.

2.23 Phonics: A method of teaching reading and writing by developing learners' phonemic awareness, that is, the ability to hear, identify, and manipulate the sounds (phonemes) in order to teach the correspondence between these sounds and the spelling patterns (graphemes) that represent them.

2.24 Professional Development: Activities that develop an individual's skills, knowledge, expertise and other characteristics as a teacher or educational professional. Such activities include but are not limited to, updating individuals' knowledge of literacy in light of recent advances; updating individuals' skills, attitudes, and approaches in light of the development of new teaching techniques and objectives, new circumstances, and new educational research; enabling individuals to apply changes made to curricula or other aspects of the teaching practice of literacy; enabling schools to develop and apply new strategies concerning the curriculum and other aspects of the teaching of literacy; and exchanging information and expertise among teachers and others. This definition recognizes that professional development can be provided in many ways, ranging from the formal to the informal and can be made available through external expertise in the form of courses, workshops or formal qualification programs, and through collaboration between schools or teachers across schools.

2.25 Progress Monitoring: An assessment used to determine whether students are making adequate progress and to determine whether instruction needs to be adjusted.

2.26 School District: A school district, other than a junior college district, organized and existing pursuant to law.

2.27 Scientifically Based: The instruction or item described is based on research that applies rigorous, systematic, and objective procedures to obtain valid knowledge that is relevant to reading development, reading instruction, and reading difficulties.

2.28 Screening: An assessment that provides a quick sample of critical reading skills that will inform the teacher if the student is on track for grade level reading proficiency by the end of the school year. A screening assessment is a first alert that a student may need extra help to make adequate progress in reading during the year.

2.29 Significant Reading Deficiency: A student does not meet the minimum skill levels for reading competency in the areas of phonemic awareness, phonics, vocabulary development, reading fluency, including oral skills, and reading comprehension established by the State Board for the student's grade level.

2.30 State Board: The state board of education created pursuant to section 1 of article IX of the state constitution.

2.31 Sufficient Duration: Dependent on a number of factors including the program or strategy being used, the age of the student, and the severity of the deficit involved.

2.32 Summative Assessment: An end of year comprehensive measurement of student mastery in order to inform taxpayers, state policy makers, support identification of successful programs, and serve a variety of state and federal accountability needs.

2.33 Systematic Instruction: A carefully planned sequence of instruction that is thought out and designed before activities and lessons are planned, maximizing the likelihood that whenever children are asked to learn something new, they already possess the appropriate prior knowledge and understandings to see its value and to learn it effectively.

2.34 Teacher: The professional responsible for the literacy instruction of the student(s) and may include an instructional coach, reading interventionist, special education teacher, Title I teacher or other personnel who are identified as effective in the teaching of reading.

2.35 Vocabulary: Knowledge of words and word meanings and includes words that a person understands and uses in language. Vocabulary is essential for both learning to read and comprehending text.

3.00 Determination of Significant Reading Deficiency.

3.01 In grades K-3, determination that a child has a Significant Reading Deficiency will be based on a child scoring at least twice at or below the cut-off score category established by the State Board approved interim assessment within a school year. All children shall be tested within 30 contact days of enrollment, and any child scoring at or below the cut-off shall be retested within 30 contact days on the same State Board approved interim assessment. In instances when the local education provider has opted to assess a student using only a State Board approved interim assessment for literacy in Spanish, the student also may be tested using a State Board approved interim assessment for literacy in English, upon parent request.

4.00 Upon Determination of Significant Reading Deficiency.

For students in grades K-3, upon determining a child has a Significant Reading Deficiency, the teacher shall:

4.01(A) Administer a State Board approved diagnostic assessment to identify the student's specific skill deficiencies in one or more of the components of reading: phonemic awareness, phonics, oral reading fluency, vocabulary, and comprehension and;

4.01(B) Monitor the ongoing progress of students determined to have a Significant Reading Deficiency by administering the selected State Board approved interim assessment periodically throughout the school year until the student demonstrates grade level proficiency and is removed from a READ plan and;

4.01(C) Collect a body of evidence to demonstrate the child is making sufficient progress to meet grade level or state approved standards.

5.00 Minimum Reading Competency Skill Levels.

The following competency skill levels guide literacy instruction and interventions for students. These competency skill levels are based on the Colorado Academic Standards and have a significant correlation to reading on grade level.

5.01 Kindergarten Minimum Reading Competency Skill Levels:

(A) Phonological Awareness.

5.01(A)(1) Recognize and produce rhyming words;

5.01(A)(2) Identify and produce groups of words that begin with the same sound (alliteration);

5.01(A)(3) Count, pronounce, blend, and segment syllables in spoken words.

5.01(B) Phonemic Awareness.

5.01(B)(1) Blend and segment the onset and rime of single syllable spoken words;

5.01(B)(2) Identify phonemes for letters;

5.01(B)(3) Identify the initial, medial, and final phoneme of spoken words;

5.01(B)(4) Isolate and pronounce initial, medial vowel, and final sounds in spoken single-syllable words;

5.01(B)(5) Add or substitute individual sounds in simple, one-syllable words to make new words.

5.01(C) Concept of print.

5.01(C)(1) Demonstrate understanding of the organization and basic features of print;

5.01(C)(2) Understand that words are separated by spaces in print, also known as concept of word;

5.01(C)(3) Identify the front cover, back cover, and title page of a book; while significant, this skill is a lower indicator of future reading success and should not be weighed as heavily as the other skills when determining if a child has attained mastery of the Minimum Reading Competency Skill Levels;

5.01(C)(4) Recognize that spoken words are represented in written language by specific sequences of letters.

5.01(D) Alphabetic Principle.

5.01(D)(1) Recognize and name all upper- and lowercase letters of the alphabet..

5.01(E) Phonics.

5.01(E)(1) Demonstrate basic knowledge of letter-sound correspondences by producing the primary or most frequent sound for each consonant;

5.01(E)(2) Distinguish between similarly spelled words by identifying the sounds of the letters that differ;

5.01(E)(3) Associate the long and short sounds with the common spellings for the five major vowels;

5.01(E)(4) Read text consisting of short sentences comprised of learned sight words and consonant-vowel-consonant (CVC) words and may also include rebuses that represent words that cannot be decoded or recognized.

5.01(F) Vocabulary Development.

5.01(F)(1) Identify new meanings for familiar words and apply them accurately;

5.01(F)(2) Use the most frequently occurring inflections and affixes;

5.01(F)(3) Use new vocabulary that is directly taught through reading, speaking, and listening; while significant, this skill is a lower indicator of future reading success and should not be weighed as heavily as the other skills when determining if a child has attained mastery of the Minimum Reading Competency Skill Levels;

5.01(F)(4) Relate new vocabulary to prior knowledge; while significant, this skill is a lower indicator of future reading success and should not be weighed as heavily as the other skills when determining if a child has attained mastery of the Minimum Reading Competency Skill Levels.

5.01(G) Oral Language.

5.01(G)(1) Use words and phrases acquired through conversations, reading and being read to, and responding to texts;

5.01(G)(2) Confirm understanding of a text read aloud or information presented orally or through other media by answering questions about key details and requesting clarification if something is not understood;

5.01(G)(3) Ask and answer questions in order to seek help, get information, or clarify something that is not understood;

5.01(G)(4) Participate in collaborative conversations with diverse partners about Kindergarten topics and texts with peers and adults in small and large groups; while significant, this skill is a lower indicator of future reading success and should not be weighed as heavily as the other skills when determining if a child has attained mastery of the Minimum Reading Competency Skill Levels;

5.01(G)(5) Listen with comprehension to follow two-step directions; while significant, this skill is a lower indicator of future reading success and should not be weighed as heavily as the other skills when determining if a child has attained mastery of the Minimum Reading Competency Skill Levels.

5.01(H) Listening Comprehension.

5.01(H)(1) With prompting and support, answer questions about key details in a text;

5.01(H)(2) With prompting and support, identify characters, settings, and major events in a story;

5.01(H)(3) Recognize common types of texts.

5.02 First Grade Minimum Reading Competency Skill Levels.

5.02(A) Phonemic Awareness.

5.02(A)(1) Orally produce single-syllable words by blending sounds, including blends;

5.02(A)(2) Segment spoken single-syllable words into their complete sequence of individual sounds;

5.02(A)(3) Distinguish long from short vowel sounds in spoken single-syllable words.

5.02(B) Concept of Print

5.03(B)(1) Recognize the distinguishing features of a sentence.

5.02(C) Phonics

5.02(C)(1) Know the spelling-sound correspondences for common consonant digraphs;

5.02(C)(2) Use knowledge that every syllable must have a vowel sound to determine the number of syllables in a printed word;

5.02(C)(3) Decode two-syllable words following basic patterns by breaking words into syllables;

5.02(C)(4) Know final -e and common vowel team conventions for representing long vowel sounds;

5.02(C)(5) Read words with inflectional endings;

5.02(C)(6) Use onsets and rimes to create new words (ip to make dip, lip, slip, ship);

5.02(C)(7) Accurately decode unknown words that follow a predictable letter/sound relationship

5.02(D) Reading Fluency.

5.02(D)(1) Read grade-appropriate irregularly spelled words;

5.02(D)(2) Read a minimum of 23 words per minute in the winter with fluency; read a minimum of 53 words per minute in the spring with fluency.

5.02(E) Vocabulary Development.

5.02(E)(1) Use sentence level context as a clue to the meaning of a word or phrase;

5.02(E)(2) Identify and understand compound words.

5.02(F) Oral Language.

5.02(F)(1) Use sentence level context as a clue to the meaning of a word or phrase;

5.02(F)(2) Produce complete sentences when appropriate to task and situation.

5.02(G) Reading Comprehension.

5.02(G)(1) Answer questions about key details in a text;

5.02(G)(2) Make predictions about what will happen in the text and explain whether they were confirmed or not and why, providing evidence from the text;

5.02(G)(3) Explain major differences between books that tell stories and books that give information;

5.02(G)(4) Identify who is telling the story at various points in a text;

5.02(G)(5) Describe the connection between two individuals, events, ideas, or pieces of information in a text;

5.02(G)(6) Know and use various text features to locate key factors or information in a text;

5.02(G)(7) Identify the reasons an author gives to support points in a text;

5.02(G)(8) Compare and contrast the adventures and experiences of characters in stories;

5.02(G)(9) Describe characters, settings, and major events in a story, using key details;

5.02(G)(10) Identify basic similarities in and differences between two texts on the same topic.

5.03 Second Grade Minimum Reading Competency Skill Levels.

5.03(A) Phonemic Awareness.

5.03(A)(1) The student must be able to demonstrate all of the phonemic awareness skill competencies outlined in Kindergarten and First grade.

5.03(B) Phonics.

5.03(B)(1) Decode words with common prefixes and suffixes;

5.03(B)(2) Identify words with inconsistent but common spelling-sound correspondences;

5.03(B)(3) Distinguish long and short vowels in regularly spelled one syllable words;

5.03(B)(4) Know spelling-sound correspondences for additional common vowel teams;

5.03(B)(5) Read multisyllabic words accurately and fluently;

5.03(B)(6) Decode regularly spelled two-syllable words with long vowels.

5.03(C) Reading Fluency.

5.03(C)(1) Read grade-appropriate irregularly spelled words;

5.03(C)(2) Read a minimum of 51 words per minute in the fall with fluency; read a minimum of 72 words per minute in the winter with fluency; read a minimum of 89 words per minute in the spring with fluency;

5.03(C)(3) Read grade level text accurately and fluently, attending to phrasing, intonation, and punctuation.

5.03(D) Vocabulary Development.

5.03(D)(1) Determine the meaning of a new word formed when a known prefix is added to a known word;

5.03(D)(2) Use a known root word as a clue to the meaning of an unknown word with the same root;

5.03(D)(3) Create new words by combining base words with affixes to connect known words to new words;

5.03(D)(4) Use knowledge of the meaning of individual words to predict the meaning of compound words.

5.03(E) Oral Language.

5.03(E)(1) Use content specific vocabulary to ask questions and provide information;

5.03(E)(2) Recount or describe key ideas or details from a text read aloud.

5.03(F) Reading Comprehension.

5.03(F)(1) Recount or describe key ideas or details from a text read aloud;

5.03(F)(2) Use context to confirm or self-correct word recognition and understanding, rereading as necessary;

5.03(F)(3) Answer such questions as who, what, where, when, why and how to demonstrate understanding of key details in a text;

5.03(F)(4) Summarize the main idea using relevant and significant details in a variety of texts;

5.03(F)(5) Know and use various text features to locate key factors or information in a text efficiently;

5.03(F)(6) Identify the main purpose of a text, including what the author wants to answer, explain, or describe;

5.03(F)(7) Read text to perform a specific task such as follow a recipe or play a game;

5.03(F)(8) Explain how specific images contribute to and clarify a text;

5.03(F)(9) Compare and contrast the most important points presented by two texts on the same topic;

5.03(F)(10) Read and comprehend informational texts, including history/social studies, science, and technical texts;

5.03(F)(11) Describe how characters in a story respond to major events and challenges;

5.03(F)(12) Describe the overall structure of a story, including describing how the beginning introduces the story and the ending concludes the story;

5.03(F)(13) Compare and contrast two or more versions of the same story by different authors or by different cultures.

5.04 Third Grade Minimum Reading Competency Skills.

5.04(A) Phonemic Awareness.

5.04(A)(1) The student must be able to demonstrate all of the phonemic awareness skill competencies outlined in Kindergarten and First grade.

5.04(B) Phonics.

5.04(B)(1) Identify and know the meaning of the most common prefixes and derivational suffixes;

5.04(B)(2) Decode words with common Latin suffixes;

5.04(B)(3) Decode multisyllable words;

5.04(C) Reading Fluency.

5.04(C)(1) Read grade-appropriate irregularly spelled words.

5.04(C)(2) Read a minimum of 71 words per minute in the fall with fluency; read a minimum of 92 words per minute in the winter with fluency; read a minimum of 107 words per minute in the spring with fluency;

5.04(C)(3) Read grade level text accurately and fluently, attending to phrasing, intonation, and punctuation.

5.04(D) Vocabulary Development.

5.04(D)(1) Determine the meaning of a new word formed when a known affix is added to a known word;

5.04(D)(2) Determine the meaning of words and phrases as they are used in a text, distinguishing literal from nonliteral language;

5.04(D)(3) Use sentence-level context as a clue to the meaning of a word or phrase;

5.04(D)(4) Use knowledge of word relationships to identify antonyms or synonyms to clarify meaning;

5.04(D)(5) Use a known root word as a clue to the meaning of an unknown word with the same root;

5.04(D)(6) Determine the meaning of general academic and domain-specific words and phrases in a text relevant to a grade 3 topic or subject area.

5.04(E) Reading Comprehension.

5.04(E)(1) Identify a main topic of a multi-paragraph text as well as the focus of specific paragraphs within the text;

5.04(E)(2) Answer questions to demonstrate understanding of a text, referring explicitly to the text as the basis for the answers;

5.04(E)(3) Use a variety of comprehension strategies to interpret text (attending, searching, predicting, checking, and self-correcting);

5.04(E)(4) Determine the main idea of a text; recount the key details and explain how they support the main idea;

5.04(E)(5) Summarize central ideas and important details from a text;

5.04(E)(6) Compare and contrast the themes, settings, and plots of stories written by the same author about the same or similar characters;

5.04(E)(7) Use semantic cues and signal words (because, although) to identify cause/effect and compare/contrast relationships;

5.04(E)(8) Describe the logical connection between particular sentences and paragraphs in a text;

5.04(E)(9) Read and comprehend informational texts, including history/social studies, science, and technical texts;

5.04(E)(10) Compare and contrast the most important points and key details presented in two texts on the same topic;

5.04(E)(11) Describe the relationship between a series of historical events, scientific ideas or concepts, or steps in technical procedures in a text, using language that pertains to time, sequence, and cause/effect.

6.00 Attributes of Effective Universal Instruction.

The attributes of a multi-tiered system of support contribute to more meaningful identification of learning problems related to literacy achievement, improve instructional quality, provide all students with the best opportunity to learn to read, assist with the identification of learning disabilities specific to learning to read, and accelerate the reading skills of advanced readers. The following are attributes of effective universal instruction.

6.01(A) Addresses the five components of reading (phonemic awareness, phonics, fluency, vocabulary, and comprehension) appropriate to the age, grade, language of instruction and needs of students, recognizing the continuum of reading development and;

6.01(B) Guided by the assessment of a student's reading proficiency using a state board approved interim assessment at least twice, within the first 30 days of a student's enrollment and on an on-going basis through the use of interim assessment probes specific to the student's diagnosed reading skill deficiencies throughout the academic year and;

6.01(C) A minimum of 90 minutes of instruction and;

6.01(D) Utilizes a scope and sequence that is delivered explicitly with judicious review, allowing for active and engaged students and;

6.01(E) Driven by the Colorado Academic Standards.

7.00 Attributes of Effective Targeted and Intensive Instructional Intervention.

The attributes of a multi-tiered system of support contribute to more meaningful identification of learning problems related to literacy achievement, improve instructional quality, provide all students with the best opportunity to learn to read, assist with the identification of learning disabilities specific to learning to read, and accelerate the reading skills of advanced readers. The following are attributes of effective targeted and intensive instructional intervention.

7.01(A) Addresses one or more of the five components of reading with intentional focus on identified area(s) of deficit according to interim and diagnostic assessments (phonemic awareness, phonics, fluency, vocabulary, and comprehension) and;

7.01(B) Delivered with sufficient intensity, frequency, urgency, and duration and;

7.01(C) Guided by data from diagnostic, interim, and observational assessments focused on students' areas of need and;

7.01(D) Directed by an effective teacher in the teaching of reading and;

7.01(E) Utilizes a scope and sequence that is delivered explicitly with judicious review, allowing for active and engaged students;

7.01(F) Delivered in a small group format.

8.00 Notice of Process for Possible Inclusion in Approved Assessment List(s).

8.01(A) At least one month prior to recommending any new interim, diagnostic, and summative assessments be added to the approved assessment list, the Department will post a notice on its web-site indicating the timeline for review and recommendation of new interim, diagnostic, and summative assessments, the process and deadline for submitting assessments for consideration, and the criteria that will be used by the Department in reviewing assessments.

8.01(B) Criteria for reviewing interim, diagnostic, and summative assessments will include scientifically based, valid and reliable, proven to accurately identify deficiencies, and at least one assessment shall be normed for students who speak Spanish, consistent with the criteria outlined in section 22-7-1209 (2) (a), C.R.S.

8.01(C) After reviewing all submissions, the Department will notify publishers of recommended lists of interim, diagnostic, and summative assessments to be presented to the State Board.

8.01(D) The Department will periodically review lists of approved interim, diagnostic, and summative assessments and recommend updates to the State Board as appropriate.

9.00 Approved Interim Reading Assessments.

9.01(A) For 2012-13 and 2013-14, the Developmental Reading Assessment 2nd Edition (DRA2)/Evaluacion del desarrollo de la lectura 2 (EDL2), the Phonological Awareness Literacy Screening (PALS)/Phonological Awareness Literacy Screening Espanol (PALS Espanol), and Dynamic Indicators of Basic Early Literacy Skills (DIBELS 6th or 7th)/Indicadores Dinamicos del Exito en la Lectura (IDEL) will be approved for use as interim assessments.

9.01(B) Beginning in 2013 – 2014, in addition to the Developmental Reading Assessment 2nd Edition (DRA2)/Evaluacion del desarrollo de la lectura 2 (EDL2), the Phonological Awareness Literacy Screening (PALS)/Phonological Awareness Literacy Screening Espanol (PALS Espanol), and Dynamic Indicators of Basic Early Literacy Skills (DIBELS 6th or 7th)/Indicadores Dinamicos del Exito en la Lectura (IDEL), any additional interim assessment(s) approved by the state board during the 2013 – 2014 school year may be used.

9.01(C) Beginning in 2014-2015, the addition or removal of assessments from the approved interim assessment list may be approved based on the process and criteria established by the Department as outlined in section 22-7-1209 (b)-(d), C.R.S.

9.01(D) Beginning in 2013-2014, at least one of the approved interim reading assessments for kindergarten and first, second, and third grades will be as their native language, which assessment is available in both English and Spanish.

9.01(E) As reading comprehension is dependent upon students' understanding of the language, children with limited English proficiencies, as determined by the individual district's criteria and

documentation, must be assessed in their language of reading instruction, leading to their proficiency in reading English.

10.00 Notice of Process for Possible Inclusion on Advisory Lists of Instructional Programming and Professional Development Programs.

10.01(A) The Department will periodically review its advisory lists of instructional programming and professional development programs and update as appropriate.

10.01(B) At least one month prior to revising the lists, the Department will post a notice on its web-site indicating the timeline for review and selection of new items, the process and deadline for submitting items for consideration, and criteria that will be used by the Department in reviewing items.

10.01(C) Criteria for reviewing instructional programming will include must be proven to accelerate student progress in attaining reading competency, provide explicit and systematic skill development, include scientifically-based and reliable assessments, provide initial and ongoing analysis of student's progress, and include texts on core academic content, consistent with the criteria outlined in section 22-7-1209 (2)(b), C.R.S.

10.01(D) After reviewing all submissions, the Department will notify publishers of recommended lists of instructional programming and professional development programs.

11.00 Appeals Process for Publishers of Assessments, Instructional Programs, and Professional Development Programs.

11.01(A) If a publisher's assessment, instructional programming, or professional development program is not included on the approved list, the publisher may submit a written appeal to the Department no later than 14 days after receiving notification. Grounds for a written appeal will be limited to an explanation of why the submissions met the evaluation criteria that was identified and posted by the Department.

11.01(B) No later than 30 days after receiving the written appeal, the Department shall either add the assessment instructional programming, and/or professional development program to the approved lists or respond to the publisher with a written explanation of why the assessment, instructional programming, or professional development program will not be included.

12.00 Third-Party Evaluators to Review Reading Assessments

Instructional Programming, and Professional Development Programs. Third-party evaluators may be used to review and recommend reading assessments, instructional programming, and professional development programs. In selecting third-party evaluators, the Department will consider:

12.01(A) Potential evaluator's qualifications, specialized skills and areas of expertise, as they pertain to literacy instruction with special attention given to expertise in phonemic awareness, phonics, fluency, vocabulary, and comprehension and professional development and assessment in these 5 components of reading and;

12.01(B) Availability and flexibility of evaluator and;

12.01(C) Costs of acquiring evaluator's services and;

12.01(D) Any ethical issues, including any conflicts of interest or issues that would prevent an evaluator's ability to provide fair and objective evaluation.

13.00 District Reporting Requirements.

In order for the Department to comply with the reporting requirements found in section 22-7-1213, C.R.S., on an annual basis beginning with the 2012-2013 school year during the collection window established by the Education Data Advisory Committee, Local Education Providers must submit the following information to the Department. The State Board will review the data annually to determine if district reporting requirements are consistent with section 22-7-1213, C.R.S.

13.01(A) Student background information (SASID, name, gender, date of birth and grade level) and;

13.01(B) Indication of whether the student has been identified as having a significant reading, deficiency and;

13.01(C) Interim assessment selected by the district (from list of approved assessments) and;

13.01(D) Interim assessment score and;

13.01(E) Indication of whether testing accommodations were provided and;

13.01(F) Testing date and;

13.01(G) Indication of whether retention was recommended and;

13.01(H) Indication of whether student was retained and;

13.01(I) Indication of how per-pupil funding was allocated.

Editor's Notes

History

Entire rule eff. 04/30/2013.

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Office of the Attorney General

Tracking number: 2015-00126

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

Colorado State Board of Education

on 05/13/2015

1 CCR 301-92

RULES FOR THE ADMINISTRATION OF THE COLORADO READING TO ENSURE ACADEMIC DEVELOPMENT ACT (READ ACT)

The above-referenced rules were submitted to this office on 05/18/2015 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.

May 29, 2015 15:40:10

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 07/01/2015

Effective date

07/01/2015

FILING- 05/25/2015

FINAL REGULATIONS - CHAPTER W-2 - BIG GAME

#207 - SEASON PARTICIPATION

A. A person may hunt in only one hunting season per license year for each big game species regardless of the method of hunting used, except in accordance with regulations #207B, #207C, and #242A.6 or in #205, when the purchase of more than one license per species is authorized or when the animal taken is not counted against an annual bag limit.

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 if under 16 years of age. 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.

D. Any license marked or stamped for a season and unit, or portions thereof, is valid only as marked on the license.

E. A person may only purchase an over the counter with caps bear license for the concurrent rifle bear season if they also possess a deer or elk license for an overlapping game management unit listed on that bear license. A person may hunt bear with an over the counter with caps rifle bear license during any regular rifle deer or elk season west of I-25 or in unit 140, only if they also possess a deer or elk license (filled or unfilled) valid any day of the regular rifle deer or elk seasons. The person may hunt bear in any unit(s) for which their bear license is valid. If the deer or elk license is a Private Land Only license, use of the bear license is restricted to private land as well. The restrictions of this subsection shall not apply to hunt codes BE083P1R, BE084P5R, BE048P5R, BE058P5R, and BE059P5R.

F. Any person may take coyotes with an unfilled big game license in the same unit and season and by the same manner of take.

ARTICLE V – BLACK BEAR

#236 - BAITING

A. It shall be unlawful to hunt black bear over bait as prohibited in §33-4-101.3, C.R.S.

#237 - ARCHERY BLACK BEAR SEASONS – ONLY LAWFUL HAND-HELD BOWS MAY BE USED TO HUNT OR TAKE BLACK BEAR DURING THIS SEASON.

A. Archery Seasons

1. Hunt type, Dates, Units (as described in Chapter 0 of these regulations), Licenses, Over the Counter with a cap

Unit(s)	**Season Dates: 09/02/2015 - 09/30/2015 Unless Otherwise Shown**	
	Hunt Code	**Either-Sex Licenses (2015)**
		Over the Counter with Cap
1	BE001U1A	5
2	BE002U1A	5
3, 11, 211, 301	BE003U1A	75
4, 5, 6, 14, 16, 17, 161, 171, 214, 441	BE004U1A	300
7, 8, 9, 19, 191	BE007U1A	50
10	BE010U1A	5
12, 13, 23, 24, 25, 26, 33, 131, 231	BE012U1A	400
15, 18, 27, 28, 37, 181, 371	BE015U1A	95
20, 29, 38	BE020U1A	80
21, 22, 30, 31, 32	BE021U1A	200
34	BE034U1A	30
35, 36, 44, 45, 361, 444	BE035U1A	310
39, 46, 51, 391, 461	BE039U1A	90
40	BE040U1A	30
41, 42, 52, 411, 421, 521	BE041U1A	400
43 - north and west of Capitol Creek and Capitol Peak, west and south of the Elk Mountains ridgeline between Capitol Peak and Snowmass Mountain, and west of Pitkin-Gunnison County lines	BE043U1A	160
43 - south and east of Capitol Creek and Capitol Peak, east and north of the Elk Mountains ridgeline between Capitol Peak and Snowmass Mountain, and east of Pitkin-Gunnison County lines, 47, 471	BE047U1A	160
48, 49, 56, 57, 481, 561	BE048U1A	110
50, 500, 501	BE050U1A	60
53, 63	BE053U1A	150
54, 55, 551	BE054U1A	75
58, 581	BE058U1A	75
59, 511, 591	BE059U1A	100
60, 70	BE060U1A	120
61	BE061U1A	15
62, 64, 65	BE062U1A	200
66, 67	BE066U1A	30
68, 76, 79, 80, 81, 681, 682, 791	BE068U1A	60
69, 84, 691	BE069U1A	75
71, 72, 73, 74, 711, 741	BE071U1A	100
75, 77, 78, 751, 771	BE075U1A	150
82, 86, 861	BE082U1A	90
83, 85, 140, 851 except Bosque del Oso SWA	BE083U1A	60

Unit(s)	Season Dates: 09/02/2015 - 09/30/2015 Unless Otherwise Shown	
	Hunt Code	**Either-Sex Licenses (2015)**
		Over the Counter with Cap
201	BE201U1A	5
851 Bosque del Oso SWA only	BE851U1A	5
	TOTAL	**3875**

#238 - MUZZLE-LOADING FIREARMS BLACK BEAR SEASON - ONLY LAWFUL MUZZLE-LOADING FIREARMS (RIFLES AND SMOOTHBORE MUSKETS) MAY BE USED TO HUNT OR TAKE BLACK BEAR

A. Muzzle-loading Firearms Seasons

1. Hunt type, Dates, Units (as described in Chapter 0 of these regulations), Licenses, Over the Counter with a cap

Unit(s)	**Season Dates: 09/12/2015 – 09/20/2015 Unless Otherwise Shown**	
	Hunt Code	**Either-Sex Licenses (2015)** (Over the Counter with Cap)
1	BE001U1M	5
2	BE002U1M	5
3, 11, 211, 301	BE003U1M	20
4, 5, 6, 14, 16, 17, 161, 171, 214, 441	BE004U1M	100
7, 8, 9, 19, 191	BE007U1M	20
10	BE010U1M	5
12, 13, 23, 24, 25, 26, 33, 131, 231	BE012U1M	150
15, 18, 27, 28, 37, 181, 371	BE015U1M	25
20, 29, 38	BE020U1M	35
21, 22, 30, 31, 32	BE021U1M	60
34	BE034U1M	25
35, 36, 44, 45, 361, 444	BE035U1M	200
39, 46, 51, 391, 461	BE039U1M	40
40	BE040U1M	15
41, 42, 52, 411, 421, 521	BE041U1M	150
43 - north and west of Capitol Creek and Capitol Peak, west and south of the Elk Mountains ridgeline between Capitol Peak and Snowmass Mountain, and west of Pitkin-Gunnison County lines	BE043U1M	50
43 - south and east of Capitol Creek and Capitol Peak, east and north of the Elk Mountains ridgeline between Capitol Peak and Snowmass Mountain, and east of Pitkin-Gunnison County lines, 47, 471	BE047U1M	50
48, 49, 56, 57, 481, 561	BE048U1M	45
50, 500, 501	BE050U1M	50
53, 63	BE053U1M	100
54, 55, 551	BE054U1M	60
58, 581	BE058U1M	30
59, 511, 591	BE059U1M	40
60, 70	BE060U1M	80
61	BE061U1M	10
62, 64, 65	BE062U1M	100
66, 67	BE066U1M	15
68, 76, 79, 80, 81, 681, 682, 791	BE068U1M	45
69, 84, 691	BE069U1M	35
71, 72, 73, 74, 711, 741	BE071U1M	60
75, 77, 78, 751, 771	BE075U1M	75

Unit(s)	Season Dates: 09/12/2015 – 09/20/2015 Unless Otherwise Shown	
	Hunt Code	**Either-Sex Licenses (2015)** (Over the Counter with Cap)
82, 86, 861	BE082U1M	45
83, 85, 140, 851 except Bosque del Oso SWA	BE083U1M	25
201	BE201U1M	5
851 Bosque del Oso SWA only	BE851U1M	5
	TOTAL	**1780**

#239 - RIFLE AND ASSOCIATED METHODS – BLACK BEAR

A. Limited Rifle Seasons

1. Season Dates and Units (as described in Chapter 0 of these regulations)

	Season Dates: 09/02-09/30 Annually Unless Otherwise Shown	
Unit	**Hunt Code**	**Either-Sex Licenses (2015)**
1	BE001O1R	5
2	BE002O1R	5
3, 11, 211, 301	BE003O1R	150
4, 5, 6, 14, 16, 17, 161, 171, 214, 441	BE004O1R	800
7, 8, 9, 19, 191	BE007O1R	90
10	BE010O1R	5
12, 13, 23, 24, 25, 26, 33, 131, 231	BE012O1R	800
15, 18, 27, 28, 37, 181, 371	BE015O1R	100
20, 29, 38	BE020O1R	85
21, 22, 30, 31, 32	BE021O1R	800
34	BE034O1R	120
35, 36, 44, 45, 361, 444	BE035O1R	1000
39, 46, 51, 391, 461	BE039O1R	175
40	BE040O1R	40
41, 42, 52, 411, 421, 521	BE041O1R	1500
43 - north and west of Capitol Creek and Capitol Peak, west and south of the Elk Mountains ridgeline between Capitol Peak and Snowmass Mountain, and west of Pitkin-Gunnison County lines	BE043O1R	270
43 - south and east of Capitol Creek and Capitol Peak, east and north of the Elk Mountains ridgeline between Capitol Peak and Snowmass Mountain, and east of Pitkin-Gunnison County lines, 47, 471	BE047O1R	250
48, 49, 56, 57, 481, 561	BE048O1R	200
50, 500, 501	BE050O1R	75
53, 63	BE053O1R	600

	Season Dates: 09/02-09/30 Annually Unless Otherwise Shown	
Unit	**Hunt Code**	**Either-Sex Licenses (2015)**
54, 55, 551	BE054O1R	125
58, 581	BE058O1R	100
59, 511, 591	BE059O1R	100
60, 70	BE060O1R	240
61	BE061O1R	180
62, 64, 65	BE062O1R	200
66, 67	BE066O1R	65
68, 76, 79, 80, 81, 681, 682, 791	BE068O1R	210
69, 84, 691	BE069O1R	185
71, 72, 73, 74, 711, 741	BE071O1R	300
75, 77, 78, 751, 771	BE075O1R	300
82, 86, 861	BE082O1R	150
83, 85, 140, 851 except Bosque del Oso SWA	BE083O1R	140
201	BE201O1R	5
851 Bosque del Oso SWA only	BE851O1R 09/02/2015-09/18/2015	5
851 Bosque del Oso SWA only	BE851O2R 09/19/2015-10/04/2015	5
	TOTAL	**9380**

B. Over the Counter with Caps Either-Sex Concurrent Rifle Season, Dates, Units (as described in Chapter 0 of these regulations), Licenses as shown by hunt code, concurrent with Regular Rifle Deer and Elk Seasons subject to season participation restrictions in #207.

	Season Dates: 10/10/2015-10/14/2015 and 10/17/2015-10/25/2015 and 10/31/2015-11/08/2015 and 11/11/2015-11/15/2015 Unless Otherwise Shown	
Unit	**Hunt Code**	**Either-Sex Licenses (2015)**
1	BE001U5R	5
2	BE002U5R	5
3, 11, 211, 301	BE003U5R	170
4, 5, 6, 14, 16, 17, 161, 171, 214, 441	BE004U5R	380
7, 8, 9, 19, 191	BE007U5R	160
10	BE010U5R	5
12, 13, 23, 24, 25, 26, 33, 34, 131, 231	BE012U5R	980
15, 18, 27, 28, 37, 181, 371	BE015U5R	115
20, 29, 38	BE020U5R	160
21, 22, 30, 31, 32	BE021U5R	360
35, 36, 43, 44, 45, 47, 361, 444, 471	BE035U5R	800
39, 46, 51, 391, 461	BE039U5R	170
40	BE040U5R	100
41, 42, 52, 411, 421, 521	BE041U5R	1230
48, 49, 56, 57, 481, 561	BE048U5R	240
50, 500, 501	BE050U5R	190
53, 63	BE053U5R	370
54, 55, 551	BE054U5R	85
58, 59, 511, 581, 591	BE058U5R	210
60, 62, 64, 65, 70	BE060U5R	465
61	BE061U5R	100
66, 67	BE066U5R	45
68, 79, 80, 81, 681, 682, 791	BE068U5R	100
69, 84, 691	BE069U5R	85
71, 72, 73, 74, 711, 741	BE071U5R	455
75, 77, 78, 751, 771	BE075U5R	500
76	BE076U5R	10
82, 86, 861	BE082U5R	130
83, 85, 140, 851 except Bosque del Oso SWA	BE083U5R	160
201	BE201U5R	5
851 Bosque del Oso SWA only	BE851U5R	7
	TOTAL	**7797**

C. Over the Counter Plains Regular Rifle Season, Dates, Units (as described in Chapter 0 of these regulations), Over the Counter as shown by hunt code

Unit	Season Dates:	Licenses (2015)
87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 109, 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, 141, 142, 143, 144, 145, 146, 147, 951	BE087U6R 09/02/2015 - 11/15/2015	Unlimited
	TOTAL	**Unlimited**

D. Over the Counter with Cap Private Land Only Rifle Season, Dates, Units (as described in Chapter 0 of these regulations), Over the Counter as shown by hunt code

Unit	Season Dates:	Licenses (2015)
48, 49, 56, 57, 481, 561	BE048P5R 09/02/2015-11/15/2015	75
58, 581	BE058P5R 09/02/2015-11/15/2015	150
59, 511	BE059P5R 09/02/2015-11/15/2015	300
83, 85, 140, 851	BE083P1R 09/02/2015-09/30/2015	210
84 - That portion bounded on the north by Colo 96, Siloam Rd, Colo 78, Water Barrel Rd, and Burnt Mill Rd; on the east by I-25; on the south by Huerfano Co Rd 650 (Lascar Rd); and on the west by the San Isabel Forest boundary and Colo 165	BE084P5R 09/02/2015-11/15/2015	100
	TOTAL	**835**

E. Private Land Only Seasons

1. Private Land Only Dates, Unit (as described in Chapter 0 of these regulations), and Licenses, Limited Licenses as shown by hunt code.

Unit	Hunt Code	Date Open	Date Closed	Licenses (2015)
14	BE014P1R	09/02/2015	09/30/2015	20
18, 28	BE018P1R	09/02/2015	09/30/2015	10
18, 28	BE018P5R	10/01/2015	11/15/2015	15
25, 26	BE025P1R	09/02/2015	09/30/2015	50
25, 26	BE025P5R	10/01/2015	11/15/2015	50
30	BE030P1R	09/02/2015	09/30/2015	40
30	BE030P5R	10/01/2015	11/15/2015	25
31, 32	BE031P1R	09/02/2015	09/30/2015	80
31, 32	BE031P5R	10/01/2015	11/15/2015	80
34	BE034P1R	09/02/2015	09/30/2015	10
34	BE034P5R	10/01/2015	11/15/2015	20
35, 36, 43, 44, 45, 47, 361, 444, 471	BE035P1R	09/02/2015	09/30/2015	130
35, 36, 43, 44, 45, 47, 361, 444, 471	BE035P5R	10/01/2015	11/15/2015	120

Unit	Hunt Code	Date Open	Date Closed	Licenses (2015)
37	BE037P1R	09/02/2015	09/30/2015	10
37	BE037P5R	10/01/2015	11/15/2015	5
40	BE040P1R	09/02/2015	09/30/2015	110
41, 42, 421	BE041P1R	09/02/2015	09/30/2015	250
41, 42, 421	BE041P5R	10/01/2015	11/15/2015	250
60, 70	BE060P1R	09/02/2015	09/30/2015	90
60, 70	BE060P5R	10/01/2015	11/15/2015	60
61	BE061P1R	09/02/2015	09/30/2015	60
62, 64, 65	BE062P1R	09/02/2015	09/30/2015	120
62, 64, 65	BE062P5R	10/01/2015	11/15/2015	90
69, 84, 691	BE069P1R	09/02/2015	09/30/2015	145
71, 72, 73, 74, 711, 741	BE071P1R	09/02/2015	09/30/2015	55
75, 77, 78, 751, 771	BE075P1R	09/02/2015	09/30/2015	60
86, 861	BE086P1R	09/02/2015	09/30/2015	95
131	BE131P1R	09/02/2015	09/30/2015	25
			TOTAL	**2075**

#241 - SPECIAL RESTRICTIONS

A. No person shall hunt, take or harass a bear in its den.

B. No cubs shall be killed nor shall any black bear accompanied by one (1) or more cubs be killed. As used herein a "cub" shall mean any black bear less than one (1) year of age.

C. Inspection and Seal Required.

1. Black bear taken by licensed hunters shall be personally presented to the Division or other official designated by the Division for inspection and sealing within 5 working days after the taking thereof. Bear heads and hides must be unfrozen when presented for inspection. If not unfrozen, the Division may retain heads and hides as necessary for thawing sufficient to extract a premolar tooth. No fee shall be required for the inspection and issuance of a legal possession seal, which shall remain attached to the hide until such hide is tanned.

2. Black bears shall not be transported, shipped or otherwise taken out of Colorado until the hide and skull are inspected and sealed by authorized personnel of the Division. Possession of any bear hide not having a seal attached within the 5 working days shall be unlawful and such hide shall become the property of the State.

3. Inspection and sealing shall be arranged by contacting the Division Officer or the Division office.

4. A mandatory check report shall be accurately completed by the hunter at the time of inspection.

5. At the time of the mandatory check, the Division shall be authorized to extract and retain a premolar tooth.

D. Individuals taking black bear under authority of §33-3-106(3) shall report the bear within five (5) days after the taking thereof as required by said statute and the carcass, hide and other parts of the bear shall remain the property of the state.

ARTICLE VI - MOUNTAIN LION

#242 - RIFLE AND ASSOCIATED METHODS MOUNTAIN LION SEASONS

A. General and Extended Seasons

1. Dogs may be used to hunt mountain lion. However, the pack size shall be limited to no more than eight (8) dogs.

2. The hunter that takes a mountain lion shall be present at the time and place that any dogs are released on the track of a mountain lion and must continuously participate in the hunt until it ends. After a mountain lion has been pursued, treed, cornered or held at bay, a properly licensed person shall take or release the mountain lion immediately. No person shall in any manner restrict or hinder the mountain lion's ability to escape for the purpose of allowing a person who was not present at the time and place that any dogs were released, to arrive and take the mountain lion.

3. Without regard to harvest limit quotas, unit boundaries or season dates, the Director or his designee may authorize the taking of any problem lion by any lawful means designated, including but not limited to methods permitted under Article XVIII, Section 12b, of the Colorado Constitution, when such lion are causing damage to livestock or property or are frequenting areas of incompatibility with other users as may be necessary to protect public health, safety and welfare. The taking of lion under this section shall be by licensed hunters, houndsmen, or trappers who shall be bound by all other statutes and regulations regarding the taking and possession of mountain lion.

4. The Director shall establish a statewide list of hunters, houndsmen, and trappers to take problem lions taking into consideration the ability to respond, skill, experience, location, and the ability of the hunters, houndsmen, or trappers who have applied to participate in removal operations; and, in selecting participants from that list for any particular removal operation shall further take into consideration the urgency dictated by the situation and the environment in which the removal will occur.

5. Research Area:

   a. The Research Area is defined as the area bounded on the east by Colo 348 at Delta, on the north by 25 Mesa Road and USFS 503 to Nucla, on the south and west by Colo 97 to Colo 141 and Colo 145 to Placerville and on the south by Colo 62 to Ridgway and on the east by US 550 to Montrose and by US 50 to Delta.

   b. A free permit is required to hunt lions in the Research Area. Permits are valid for 14 consecutive days, and are unlimited. Permits are available at the Montrose Service Center at 2300 S. Townsend Ave., Montrose, CO 81401. Permits may be obtained beginning 14 days prior to the opening of the season through January 31 or filling of the Research Area harvest limit quota, whichever comes first.

6. Hunt Type, Dates, Units (as described in Chapter 0 of these regulations), and Harvest limit Quotas.

a. Mountain Lion, Either-sex Season and Harvest Limit Quota – In Game Management Units, as follows, the day after the close of the final combined rifle season through March 31 annually:(through January 31 for GMU 61, 62 and 70 within the Research Area):

Units	Lion Harvest Limit Quota
1, 2	5
3, 301	5
4 (north of Co Rd 27 and USFS 110), 5	8
4 (south of Co Rd 27 and USFS 110), 214, 441	5
6, 16, 17, 161, 171	4
7	1
8	4
9	3
10	10
11	12
12	16
13 (west of Hayden Divide Road)	12
13 (east of Hayden Divide Road), 131	5
15	5
18, 27, 28, 37, 181, 371	11
19	5
20	9
21	15
22	15
23	17
24	4
25, 26, 34	7
29	2
30	10
31	12
32	5
33	13
35, 36, 361	9
38	7
39, 391	7
40	7
41	5
42	10
43	7
44	6
45	1
46	6
47	1
48, 49, 50, 481, 500	8
51	7
52, 411	10
53, 63	8
54, 55, 551	7
56, 561	8
57, 58, 581	20
59, 591	7
60	5

Units	Lion Harvest Limit Quota
61 north of Delta-Nucla Rd	7
61, 62, 70 Research Area (subject to the limitations set forth in #242(A)(5)	5
62 north of Delta-Nucla Rd	7
64	5
65	5
66, 67	8
68, 681, 682	6
69, 84, 86, 691, 861	26
70 east of Colo 141 , except the area between Colo 145 and the San Miguel River north of the Norwood Bridge	10
70 west of Colo 141	6
71, 711	9
72	4
73	10
74, 741	6
75	4
76, 79, 791	5
77	6
78	5
80	5
81	4
82	6
83	10
85, 140, 851	24
87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 106, 107, 109, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 951	5
104, 105, 110	5
123, 124, 125, 126, 127, 128, 129, 130, 132, 133, 134, 135, 136, 137, 138, 139, 141, 142, 143, 144, 145, 146, 147	20
191	8
201	5
211	17
421	10
444	7
461	7
501	8
511	4
521	6
751, 771	5
TOTAL	**656**

b. Mountain Lion, Either-sex Season and Harvest Limit Quota – In Game Management Units, as follows, April 1 - April 30 annually:

Units	Lion Harvest Limit Quota
1, 2	2
3, 301	4
4 (north of Co Rd 27 and USFS 110), 5	3
4 (south of Co Rd 27 and USFS 110), 214, 441	2
7	1
8	3
9	2
10	6
11	3
12	1
13 (west of Hayden Divide Road)	4
13 (east of Hayden Divide Road), 131	2
19	2
20	6
22	1
24	2
29	2
31	5
32	1
33	5
38	5
39, 391	5
41	3
42	3
46	3
48, 49, 50, 481, 500	1
51	4
52, 411	6
56, 561	2
57, 58, 581	2
59, 591	3
68, 681, 682	2
70 east of Colo 141 , except the area between Colo 145 and the San Miguel River north of the Norwood Bridge	6
70 west of Colo 141	2
71, 711	1
72	3
73	2
81	2
82	3
87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 106, 107, 109, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 951	5
104, 105, 110	4
123, 124, 125, 126, 127, 128, 129, 130, 132, 133, 134, 135, 136, 137, 138, 139, 141, 142, 143, 144, 145, 146, 147	8

Units	Lion Harvest Limit Quota
191	6
201	2
211	12
421	2
461	6
501	4
511	1
521	1
TOTAL	**166**

B. Licenses and GMU Harvest Limit Quota Status

1. A valid mountain lion license is required to hunt any mountain lion.

2. Except as provided in 33-3-106 C.R.S., it is unlawful for any person to purchase or obtain a mountain lion hunting license or hunt mountain lions unless the person obtains a mountain lion education certificate issued by the Division attesting to the person's successful completion of the Division's certified mountain lion education and identification course. Any person required to obtain such a certificate shall have the certificate on his or her person while hunting or taking mountain lion.

3. Prior to each hunting trip in any game management unit, but not earlier than 5:00 p.m. of the day before hunting, lion hunters must contact 1-888-940-LION (1-888-940-5466), or any Division office and determine which game management units have not reached the unit harvest quota and are open to hunting. It shall be unlawful to hunt in a unit after it is closed.

C. Special Restrictions

1. Reporting and Sealing

   a. The taking of mountain lions by licensed hunters shall be reported to the Division within 48 hours after the taking thereof, and except as provided in these regulations, the lion shall be personally presented by the hunter for inspection and sealing within five (5) days after the taking thereof. Mountain lion heads and hides must be unfrozen when presented for inspection. If not unfrozen, the Division may retain heads and hides as necessary for thawing sufficient to extract a premolar tooth. A mandatory check report shall be accurately completed by the hunter at the time of inspection, which shall include certification that all information provided is accurate.

   b. At the time of the mandatory check, the Division shall be authorized to extract and retain a premolar tooth.

2. The legal possession seal when attached to the mountain lion skull or hide shall authorize possession, transportation, tanning or mounting thereof. No fee shall be required for the inspection and issuance of a legal possession seal which shall remain attached to the skull or hide until processed. Mountain lions shall not be transported, shipped or otherwise taken out of Colorado until the hide and skull are inspected and sealed.

3. All mountain lion taken or destroyed under Commission regulation #1702 or §33-3-106(3) C.R.S., as amended, shall remain the property of the state and shall be delivered to an

officer of the Division within five (5) days. A report shall be given to an officer of the Division at the time of delivery which contains the following:

1) Name(s) of person(s) who killed the animal(s).

2) The county and the specific location of the kill.

3) The species and number of animals killed.

4) The reason for such action.

4. Lions With Kittens – No person shall kill a mountain lion accompanied by one or more kittens or kill a kitten.

5. "Kitten" shall mean a lion with spots.

ARTICLE VIII – DEER

#243-247 VACANT

#248 - ARCHERY DEER SEASONS – ONLY LAWFUL HAND HELD BOWS MAY BE USED TO HUNT OR TAKE DEER DURING THE FOLLOWING SEASONS:

A. Regular Seasons	**Season Dates: 08/29/2015 – 09/27/2015 Unless Otherwise Shown**			
Unit	**Hunt Code**	**Licenses (2015)**		
		Antlered	**Antlerless**	**Either Sex**
1	DM001O1A	1		
2	DM002O1A	4		
3, 4, 5, 14, 214, 301, 441	DE003O1A			550
6, 16, 17, 161, 171	DM006O1A	100		
7, 8, 9, 19, 191	DE007O1A			700
10	DM010O1A	2		
11, 13, 22, 131, 211, 231 and private land portions of 12, 23, and 24	DE011O1A			250
12, 23 north of the White River, and 24 north of the North Fork of the White River	DE012O1A			100
15	DE015O1A			215
18, 27, 28, 37, 181, 371	DE018O1A			1160
20	DE020O1A			300
21, 30	DM021O1A	60		
23 south of the White River, and 24 south of the North Fork of the White River	DE023O1A			175
25, 26	DE025O1A			150
29	DE029O1A			150
31, 32	DE031O1A			200
33	DE033O1A			125
34	DE034O1A			100
35, 36, 45, 361	DE035O1A			285

A. Regular Seasons	Season Dates: 08/29/2015 – 09/27/2015 Unless Otherwise Shown			
Unit	Hunt Code	Licenses (2015)		
		Antlered	Antlerless	Either Sex
38	DE038O1A			300
39, 46	DE039O1A			200
40	DM040O1A	80		
41, 42, 421	DE041O1A			325
43, 47, 471	DE043O1A			175
44	DE044O1A			65
48, 56, 481, 561	DE048O1A			160
49, 57, 58, 581	DE049O1A			360
50, 500, 501	DE050O1A			200
51	DE051O1A			115
52, 411, 521	DM052O1A	150		
53	DM053O1A	45		
54	DM054O1A	50		
55	DM055O1A	50		
59, 511, 591	DE059O1A			150
60	DM060O1A	50		
61	DM061O1A	50		
62	DM062O1A	185		
63	DM063O1A	50		
64, 65	DM064O1A	100		
66	DM066O1A	35		
67	DM067O1A	35		
68, 681, 682	DM068O1A	80		
69, 84, 86, 691, 861	DE069O1A			325
70	DM070O1A	130		
71, 711	DM071O1A	120		
72, 73	DM072O1A	115		
74	DM074O1A	110		
75, 751	DE075O1A			185
76	DM076O1A	20		
77, 78, 771	DE077O1A			205
79, 791	DM079O1A	10		
80, 81	DM080O1A	200		
82	DM082O1A	40		
85, 851 except Bosque del Oso SWA	DM085O1A	80		
140	DM140O1A	25		
201	DM201O1A	8		
391, 461	DE391O1A			100
444	DE444O1A			100
551	DM551O1A	20		
741	DE741O1A			60
851 Bosque del Oso SWA only	DM851O1A	5		
TOTALS		**2010**		**7485**

B. Late Seasons

1. Archery – Late Season, Deer, Dates, Units (as described in Chapter 0 of these regulations), Limited Licenses.

Unit	Hunt Code	Date Open	Date Closed	Licenses (2015)		
				Antlered	Antlerless	Either Sex
87, 88, 89, 90, 95	DE087O1A	10/01/2015 11/04/2015 12/15/2015	10/23/2015 11/30/2015 12/31/2015			75
91	DE091O1A	10/01/2015 11/04/2015 12/15/2015	10/23/2015 11/30/2015 12/31/2015			60
92	DE092O1A	10/01/2015 11/04/2015 12/15/2015	10/23/2015 11/30/2015 12/31/2015			60
93, 97, 98, 100	DE093O1A	10/01/2015 11/04/2015 12/15/2015	10/23/2015 11/30/2015 12/31/2015			75
94, 951	DE094O1A	10/01/2015 11/04/2015 12/15/2015	10/23/2015 11/30/2015 12/31/2015			150
96	DE096O1A	10/01/2015 11/04/2015 12/15/2015	10/23/2015 11/30/2015 12/31/2015			80
99	DE099O1A	10/01/2015 11/04/2015 12/15/2015	10/23/2015 11/30/2015 12/31/2015			50
101, 102	DE101O1A	10/01/2015 11/04/2015 12/15/2015	10/23/2015 11/30/2015 12/31/2015			50
103	DE103O1A	10/01/2015 11/04/2015 12/15/2015	10/23/2015 11/30/2015 12/31/2015			40
104, 105, 106	DE104O1A	10/01/2015 11/04/2015 12/15/2015	10/23/2015 11/30/2015 12/31/2015			420
107	DE107O1A	10/01/2015 11/04/2015 12/15/2015	10/23/2015 11/30/2015 12/31/2015			30
109	DE109O1A	10/01/2015 11/04/2015 12/15/2015	10/23/2015 11/30/2015 12/31/2015			35
110, 111, 118, 119, 123, 124	DE110O2A	10/01/2015 11/04/2015	10/23/2015 12/31/2015			130
112, 113, 114, 115, 120, 121	DE112O2A	10/01/2015 11/04/2015	10/23/2015 12/31/2015			80
116, 117	DE116O1A	10/01/2015 11/04/2015 12/15/2015	10/23/2015 11/30/2015 12/31/2015			50
122, 125, 126, 127, 130, 132, 137, 138, 139, 146	DE122O1A	10/01/2015 11/04/2015 12/15/2015	10/23/2015 11/30/2015 12/31/2015			240
128, 133, 134, 135	DE128O2A	10/01/2015 11/04/2015	10/23/2015 12/31/2015			125

Unit	Hunt Code	Date Open	Date Closed	Licenses (2015)		
				Antlered	Antlerless	Either Sex
129	DE129O1A	10/01/2015 11/04/2015 12/15/2015	10/23/2015 11/30/2015 12/31/2015			20
136, 141, 147	DE136O1A	10/01/2015 11/04/2015 12/15/2015	10/23/2015 11/30/2015 12/31/2015			45
142	DE142O2A	10/01/2015 12/15/2015	11/30/2015 12/31/2015			25
143, 144, 145	DE143O1A	10/01/2015 11/04/2015 12/15/2015	10/23/2015 11/30/2015 12/31/2015			40
TOTALS						**1880**

C. Private Land Only Deer Seasons

1. Archery - Deer, Dates, Units (as described in Chapter 0 of these regulations), Limited Licenses.

Unit	Hunt Code	Date Open	Date Closed	Licenses (2015)		
				Antlered	Antlerless	Either Sex
4, 13, 301 – Those portions not within Craig city limits in the following townships, ranges, and sections: • T6N R90W Sections 5, 6 • T6N R91W Sections 1, 2, 3 • T7N R90W Sections 29, 30, 31, 32 • T7N R91 W Sections 25, 26, 27, 34, 36	DF004P5A	08/15/2015	09/30/2015		50	
4, 13, 301 – Those portions not within Craig city limits in the following townships, ranges, and sections: • T6N R90W Sections 5, 6 • T6N R91W Sections 1, 2, 3 • T7N R90W Sections 29, 30, 31, 32 • T7N R91 W Sections 25, 26, 27, 34, 36	DM004P5A	08/15/2015	09/30/2015	5		
30 – that portion south of the Highline Canal and east of West Salt Creek	DE030P5A	08/29/2015	10/31/2015			10

				Licenses (2015)		
Unit	Hunt Code	Date Open	Date Closed			
30 – that portion south of the Highline Canal and east of West Salt Creek	DF030P5A	08/29/2015	12/31/2015		10	
41 - Those portions bounded on the north by the Colorado River; on the east by the Orchard Mesa Canal and 38 Rd; on the south by the #2 Orchard Mesa Canal; and on the west by the 28 Rd alignment.	DE041P5A	08/29/2015	12/31/2015			25
41 - Those portions bounded on the north by the Colorado River; on the east by the Orchard Mesa Canal and38 Rd; on the south by the #2 Orchard Mesa Canal; and on the west by the 28 Rd alignment.	DF041P5A	08/29/2015	12/31/2015		10	
83	DM083P1A	08/29/2015	09/27/2015	7		
TOTALS				**12**	**70**	**35**

D. Whitetail Only Deer Seasons

1. Archery - Deer, Dates, Units (as described in Chapter 0 of these regulations), Limited Licenses.

Unit	Hunt Code	Date Open	Date Closed	Licenses (2015)		
				Antlered	Antlerless	Either Sex
103	DF103O3A	10/01/2015 11/04/2015 12/15/2015	10/23/2015 11/30/2015 12/31/2015		10	
104, 105, 106	DE104O3A	10/01/2015 11/04/2015 12/15/2015	10/23/2015 11/30/2015 12/31/2015			50
107	DE107O3A	10/01/2015 11/04/2015 12/15/2015	10/23/2015 11/30/2015 12/31/2015			30
107	DF107O3A	10/01/2015 11/04/2015 12/15/2015	10/23/2015 11/30/2015 12/31/2015		20	
109	DE109O3A	10/01/2015 11/04/2015 12/15/2015	10/23/2015 11/30/2015 12/31/2015			30
109	DF109O3A	10/01/2015 11/04/2015 12/15/2015	10/23/2015 11/30/2015 12/31/2015		20	
110, 111, 118, 119, 123, 124	DE110O4A	10/01/2015 11/04/2015	10/23/2015 12/31/2015			100
110, 111, 118, 119, 123, 124	DF110O4A	10/01/2015 11/04/2015	10/23/2015 12/31/2015		50	
112, 113, 114, 115, 120, 121	DE112O4A	10/01/2015 11/04/2015	10/23/2015 12/31/2015			80

Unit	Hunt Code	Date Open	Date Closed	Licenses (2015)		
				Antlered	Antlerless	Either Sex
112, 113, 114, 115, 120, 121	DF112O4A	10/01/2015 11/04/2015	10/23/2015 12/31/2015		50	
116, 117	DE116O3A	10/01/2015 11/04/2015 12/15/2015	10/23/2015 11/30/2015 12/31/2015			60
116, 117	DF116O3A	10/01/2015 11/04/2015 12/15/2015	10/23/2015 11/30/2015 12/31/2015		30	
122, 125, 126, 127, 130, 132, 137, 138, 139, 146	DE122O3A	10/01/2015 11/04/2015 12/15/2015	10/23/2015 11/30/2015 12/31/2015			120
122, 125, 126, 127, 130, 132, 137, 138, 139, 146	DF122O3A	10/01/2015 11/04/2015 12/15/2015	10/23/2015 11/30/2015 12/31/2015		100	
128, 133, 134, 135	DE128O4A	10/01/2015 11/04/2015	10/23/2015 12/31/2015			50
128, 133, 134, 135	DF128O4A	10/01/2015 11/04/2015	10/23/2015 12/31/2015		30	
129	DE129O3A	10/01/2015 11/04/2015 12/15/2015	10/23/2015 11/30/2015 12/31/2015			20
129	DF129O3A	10/01/2015 11/04/2015 12/15/2015	10/23/2015 11/30/2015 12/31/2015		15	
136, 141, 147	DE136O3A	10/01/2015 11/04/2015 12/15/2015	10/23/2015 11/30/2015 12/31/2015			30
136, 141, 147	DF136O3A	10/01/2015 11/04/2015 12/15/2015	10/23/2015 11/30/2015 12/31/2015		10	
143, 144, 145	DE143O3A	10/01/2015 11/04/2015 12/15/2015	10/23/2015 11/30/2015 12/31/2015			20
143, 144, 145	DF143O3A	10/01/2015 11/04/2015 12/15/2015	10/23/2015 11/30/2015 12/31/2015		30	
TOTALS					**365**	**590**

#249 - MUZZLE LOADING FIREARMS (RIFLE AND SMOOTHBORE MUSKET) DEER SEASON – ONLY LAWFUL MUZZLE-LOADING FIREARMS MAY BE USED TO HUNT OR TAKE DEER DURING THE FOLLOWING SEASONS:

A. Regular Seasons

1. Muzzle-loading, Deer, Dates, Units (as described in Chapter 0 of these regulations), Limited Licenses.

	Season Dates: 09/12/2015 – 09/20/2015 Unless Otherwise Shown		
Unit	**Hunt Code**	**Licenses (2015)**	
		Antlered	**Antlerless**
1	DM001O1M	1	
2	DM002O1M	5	

1. Muzzle-loading, Deer, Dates, Units (as described in Chapter 0 of these regulations), Limited Licenses.			
	Season Dates: 09/12/2015 – 09/20/2015 Unless Otherwise Shown		
Unit	Hunt Code	Licenses (2015)	
		Antlered	Antlerless
3, 4, 5, 14, 214, 301, 441	DM003O1M	100	
3, 4, 5, 14, 214, 301, 441	DF003O1M		75
6, 16, 17, 161, 171	DM006O1M	50	
7, 8, 9, 19, 191	DM007O1M	500	
7, 8, 9, 19, 191	DF007O1M		50
10	DM010O1M	1	
11, 13, 22, 131, 211, 231 and private land portions of 12, 23, and 24	DM011O1M	150	
11, 13, 22, 131, 211, 231 and private land portions of 12, 23, and 24	DF011O1M		10
12, 23 north of the White River, and 24 north of the North Fork of the White River	DM012O1M	50	
12, 23 north of the White River, and 24 north of the North Fork of the White River	DF012O1M		10
15	DM015O1M	120	
15	DF015O1M		60
18, 27, 28, 37, 181, 371	DM018O1M	660	
18, 27, 28, 37, 181, 371	DF018O1M		460
20	DM020O1M	125	
20	DF020O1M		50
21, 30	DM021O1M	25	
23 south of the White River, and 24 south of the North Fork of the White River	DM023O1M	75	
23 south of the White River, and 24 south of the North Fork of the White River	DF023O1M		10
25, 26	DM025O1M	70	
25, 26	DF025O1M		65
29	DM029O1M	60	
29	DF029O1M		35
31, 32	DM031O1M	110	
33	DM033O1M	50	
33	DF033O1M		10
34	DM034O1M	70	
34	DF034O1M		65
35, 36, 45, 361	DM035O1M	210	
35, 36, 45, 361	DF035O1M		100
38	DM038O1M	150	
38	DF038O1M		50
39, 46	DM039O1M	75	
39, 46	DF039O1M		25
40	DM040O1M	35	
41, 42, 421	DM041O1M	250	
41, 42, 421	DF041O1M		10

1. Muzzle-loading, Deer, Dates, Units (as described in Chapter 0 of these regulations), Limited Licenses.			
	Season Dates: 09/12/2015 – 09/20/2015 Unless Otherwise Shown		
Unit	Hunt Code	Licenses (2015)	
		Antlered	Antlerless
43, 47, 471	DM043O1M	175	
43, 47, 471	DF043O1M		10
43, 47, 471 – Youth only	DF043K1M		10
44	DM044O1M	50	
44	DF044O1M		10
48, 56, 481, 561	DM048O1M	70	
48, 56, 481, 561	DF048O1M		25
49, 57, 58, 581	DM049O1M	150	
49, 57, 58, 581	DF049O1M		25
50, 500, 501	DM050O1M	100	
51	DM051O1M	35	
51	DF051O1M		15
52, 411, 521	DM052O1M	60	
53	DM053O1M	20	
54	DM054O1M	45	
55	DM055O1M	35	
59, 511, 591	DM059O1M	60	
59, 511, 591	DF059O1M		10
60	DM060O1M	10	
61	DM061O1M	15	
62	DM062O1M	30	
63	DM063O1M	25	
64, 65	DM064O1M	25	
66	DM066O1M	25	
67	DM067O1M	25	
68, 681, 682	DM068O1M	90	
69, 84, 86, 691, 861	DM069O1M	185	
69, 84, 86, 691, 861	DF069O1M		25
70	DM070O1M	80	
71, 711	DM071O1M	70	
72, 73	DM072O1M	95	
74	DM074O1M	105	
75, 751	DM075O1M	160	
75, 751	DF075O1M		10
76	DM076O1M	15	
77, 78, 771	DM077O1M	205	
77, 78, 771	DF077O1M		10
79, 791	DM079O1M	20	
80, 81	DM080O1M	135	
82	DM082O1M	50	
85, 851 except Bosque del Oso SWA	DM085O1M	20	
140	DM140O1M	5	
201	DM201O1M	8	
391, 461	DM391O1M	25	
391, 461	DF391O1M		10
444	DM444O1M	50	
444	DF444O1M		10

1. Muzzle-loading, Deer, Dates, Units (as described in Chapter 0 of these regulations), Limited Licenses.			
	Season Dates: 09/12/2015 – 09/20/2015 Unless Otherwise Shown		
Unit	Hunt Code	Licenses (2015)	
		Antlered	Antlerless
501	DF501O1M		25
551	DM551O1M	15	
741	DM741O1M	40	
741	DF741O1M		5
851 Bosque del Oso SWA only	DM851O1M	5	
TOTALS		**5275**	**1285**

B. Eastern Plains Season (East of I-25)

1. Muzzle-loading – Eastern Plains Season, Deer, Dates, Units (as described in Chapter 0 of these regulations), Limited Licenses.			
Unit	Season Dates: 10/10/2015 – 10/18/2015 Unless Otherwise Shown		
	Hunt Code	Licenses (2015)	
		Antlered	Antlerless
87, 88, 89, 90, 95	DM087O2M	40	
87, 88, 89, 90, 95	DF087O2M		40
91	DM091O2M	25	
91	DF091O2M		25
92	DM092O2M	25	
92	DF092O2M		25
93, 97, 98, 100	DM093O2M	25	
93, 97, 98, 100	DF093O2M		30
94	DM094O2M	10	
94	DF094O2M		15
96	DM096O2M	35	
96	DF096O2M		25
99	DM099O2M	25	
99	DF099O2M		30
101, 102	DM101O2M	20	
101, 102	DF101O2M		20
103	DM103O2M	10	
103	DF103O2M		15
104, 105, 106	DM104O2M	35	
104, 105, 106	DF104O2M		25
107, 112, 113, 114, 115, 120, 121	DM107O2M	75	
107, 112, 113, 114, 115, 120, 121	DF107O2M		30
109	DM109O2M	10	
109	DF109O2M		10
110, 111, 118, 119, 123, 124	DM110O2M	15	
110, 111, 118, 119, 123, 124	DF110O2M		15
116, 117	DM116O2M	10	
116, 117	DF116O2M		10
122, 125, 126, 127, 130, 132, 137, 138, 139, 146	DM122O2M	35	
122, 125, 126, 127, 130, 132, 137, 138, 139, 146	DF122O2M		30

1. Muzzle-loading – Eastern Plains Season, Deer, Dates, Units (as described in Chapter 0 of these regulations), Limited Licenses.			
Unit	**Season Dates: 10/10/2015 – 10/18/2015 Unless Otherwise Shown**		
	Hunt Code	**Licenses (2015)**	
		Antlered	**Antlerless**
128, 129, 133, 134, 135, 136, 141, 147	DM128O2M	25	
128, 129, 133, 134, 135, 136, 141, 147	DF128O2M		10
142	DM142O2M	15	
142	DF142O2M		10
143, 144, 145	DM143O2M	15	
143, 144, 145	DF143O2M		15
951	DM951O2M	15	
951	DF951O2M		15
TOTALS		**465**	**395**

C. Private Land Only Deer Seasons

1. Muzzle-loading – Deer, Dates, Units (as described in Chapter 0 of these regulations), Limited Licenses.

Unit	**Hunt Code**	**Date Open**	**Date Closed**	**Licenses (2015)**		
				Antlered	Antlerless	Either Sex
83	DM083P1M	09/12/2015	09/20/2015	8		
TOTAL				**8**		

D. Whitetail Only Deer Seasons

1. Muzzle-loading - Deer, Dates, Units (as described in Chapter 0 of these regulations), Limited Licenses.

Unit	**Season Dates: 10/10/2015 – 10/18/2015 Antlerless**		**Season Dates: 10/10/2015 – 10/18/2015 Either-sex**	
	Hunt Code	**Licenses (2015)**	**Hunt Code**	**Licenses (2015)**
104, 105, 106	DF104O3M	45	DE104O3M	15
107, 112, 113, 114, 115, 120, 121	DF107O3M	15	DE107O3M	80
109	DF109O3M	20	DE109O3M	35
110, 111, 118, 119, 123, 124	DF110O3M	45	DE110O3M	50
116, 117	DF116O3M	15	DE116O3M	20
122, 125, 126, 127, 130, 132, 137, 138, 139, 146	DF122O3M	10	DE122O3M	60
128, 129, 133, 134, 135, 136, 141, 147	DF128O3M	20	DE128O3M	10
143, 144, 145	DF143O3M	10	DE143O3M	20
TOTALS		**180**		**290**

#250 - RIFLE AND ASSOCIATED METHODS DEER SEASONS - ANY LAWFUL METHOD OF TAKE PERMITTED

A. Early Seasons

1. Early Rifle Season, Deer, Dates, Units (as described in Chapter 0 of these regulations), Limited Licenses.

Unit	Hunt Code	Date Open	Date Closed	Licenses (2015)	
				Antlered	Antlerless
That portion of GMU 6 above 10,000 feet elevation and GMU 7 within the Rawah Wilderness area	DM006E1R	09/05/2015	09/13/2015	10	
6	DM006E2R	09/28/2015	10/06/2015	30	
Those portions of GMUs 12, 24, 25, 26, and 231 within the Flat Tops Wilderness Area	DM012E1R	09/05/2015	09/13/2015	10	
Those portions of GMUs 14, 16, and 161 within the Mt. Zirkel Wilderness Area	DM014E1R	09/05/2015	09/13/2015	50	
16	DM016E1R	09/28/2015	10/06/2015	30	
17	DM017E1R	09/28/2015	10/06/2015	25	
That portion of GMU 36 within the Eagles Nest Wilderness Area.	DM036E1R	09/12/2015	09/20/2015	15	
That portion of GMU 43 within the Maroon Bells-Snowmass Wilderness area	DM043E1R	09/12/2015	09/20/2015	20	
Those portions of GMUs 44, 45, and 444 within the Holy Cross Wilderness Area	DM044E1R	09/12/2015	09/20/2015	15	
That portion of GMU 47 within the Hunter-Fryingpan Wilderness Area	DM047E1R	09/12/2015	09/20/2015	20	
Those portions of GMUs 48, 56, 481, 561 above timberline	DM048E1R	09/05/2015	09/13/2015	20	
That portion of GMU 65 above 11,000 feet elevation	DM065E1R	09/12/2015	09/20/2015	15	
That portion of GMU 74 above timberline	DM074E1R	09/12/2015	09/20/2015	25	
Those portions of GMUs 82, 86, and 861 above timberline	DM082E1R	09/05/2015	09/13/2015	30	
161	DM161E1R	09/28/2015	10/06/2015	30	
171	DM171E1R	09/28/2015	10/06/2015	25	
471	DM471E1R	09/12/2015	09/20/2015	20	
TOTAL				**390**	

B. Regular Rifle Deer Seasons

1. Combined over the counter white-tailed rifle deer seasons, Dates, Units (as described in Chapter 0 of these regulations).

Unit	Hunt Code	Date Open	Date Closed	Licenses (2015)		
				Antlered	Antlerless	Either Sex
48, 49, 56, 57, 58, 59, 69, 84, 85, 86, 140, 481, 511, 561, 581, 591, 691, 851 except Bosque del Oso SWA, 861 Available for purchase at CPW offices only	DF048U6R	12/01/2015	12/31/2015		Unlimited	
48, 49, 56, 57, 58, 59, 69, 84, 85, 86, 140, 481, 511, 561, 581, 591, 691, 851 except Bosque del Oso SWA, 861 Available for purchase at CPW offices only	DE048U6R	12/01/2015	12/31/2015			Unlimited

C. Regular Rifle Deer Seasons

1. Combined rifle deer seasons, Dates, Units (as described in Chapter 0 of these regulations), Limited Licenses.

Unit	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 (2015)
	Hunt Code	Licenses (2015)		Hunt Code	Licenses (2015)		Hunt Code	Licenses (2015)			
		ANTLERED	ANTLERLESS		ANTLERED	ANTLERLESS		ANTLERED	ANTLERLESS		
1	DM001O2R	11		DM001O3R	4						15
2	DM002O2R	15		DM002O3R	10						25
3, 301	DM003O2R	475		DM003O3R	575		DM003O4R	10			1060
3, 301	DF003O2R		100	DF003O3R		145					245
4, 14, 214, 441	DM004O2R	775		DM004O3R	275		DM004O4R	10			1060
4, 14, 214, 441	DF004O2R		200	DF004O3R		35					235
5	DM005O2R	75		DM005O3R	30		DM005O4R	10			115
5	DF005O2R		20	DF005O3R		10					30
6	DM006O2R	20		DM006O3R	15						35
6, 16, 17, 161, 171							DM006O4R	10			10
7, 8	DM007O2R			DM007O3R			DM007O4R	170		575	745
7, 8	DF007O2R		130								130

Unit	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 (2015)
	Hunt Code	Licenses (2015)		Hunt Code	Licenses (2015)		Hunt Code	Licenses (2015)			
		ANTLERED	ANTLERLESS		ANTLERED	ANTLERLESS		ANTLERED	ANTLERLESS		
9, 19, 191	DM009O2R			DM009O3R			DM009O4R	400		1050	1450
9, 19, 191	DF009O2R		200								200
10	DM010O2R	20		DM010O3R	5						25
11, 211	DM011O2R	350		DM011O3R	275		DM011O4R	10			635
11, 211	DF011O2R		10	DF011O3R		10					20
12, 13, 23, 24	DM012O2R	675		DM012O3R	425		DM012O4R	10			1110
12, 13, 23, 24	DF012O2R		10	DF012O3R		10					20
15	DM015O2R	425		DM015O3R	295		DM015O4R	30			750
15	DF015O2R			DF015O3R						230	230
16	DM016O2R	15		DM016O3R	15						30
17	DM017O2R	15		DM017O3R	15						30
18, 28, 37, 371	DM018O2R	1775		DM018O3R	1500		DM018O4R	270			3545
18, 28, 37, 371	DF018O2R		820	DF018O3R		820					1640
20	DM020O2R			DM020O3R			DM020O4R	125		370	495
20	DF020O2R			DF020O3R			DF020O4R			30	30
21	DM021O2R	265		DM021O3R	60						325
22	DM022O2R	275		DM022O3R	250		DM022O4R	10			535
22	DF022O2R		10	DF022O3R		10					20
25, 26	DM025O2R	395		DM025O3R	265		DM025O4R	50			710
25, 26	DF025O2R			DF025O3R						365	365
27, 181	DM027O2R	615		DM027O3R	515		DM027O4R	90			1220
27, 181	DF027O2R		410	DF027O3R		275					685
29	DM029O2R	80		DM029O3R	80		DM029O4R	80			240
29	DF029O2R		25	DF029O3R		25	DF029O4R		25		75
30	DM030O2R	80		DM030O3R	45						125
30	DF030O2R		10	DF030O3R		10					20
31, 32	DM031O2R	250		DM031O3R	165						415
33	DM033O2R	450		DM033O3R	275		DM033O4R	12			737
34	DM034O2R	220		DM034O3R	150		DM034O4R	35			405
34	DF034O2R			DF034O3R						130	130
35, 36, 45, 361	DM035O2R	685		DM035O3R	495		DM035O4R	20			1200
35, 36, 45, 361	DF035O2R			DF035O3R						275	275
38	DM038O2R			DM038O3R			DM038O4R	160		300	460
38	DF038O2R			DF038O3R			DF038O4R			190	190
39, 46	DM039O2R			DM039O3R			DM039O4R	50		275	325

Unit	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 (2015)
	Hunt Code	Licenses (2015)		Hunt Code	Licenses (2015)		Hunt Code	Licenses (2015)			
		ANTLERED	ANTLERLESS		ANTLERED	ANTLERLESS		ANTLERED	ANTLERLESS		
39, 46	DF039O2R		25	DF039O3R		25	DF039O4R		25		75
40	DM040O2R	135		DM040O3R	95						230
41, 42, 421	DM041O2R			DM041O3R						1800	1800
41, 42, 421	DF041O2R			DF041O3R						10	10
43, 47, 471	DM043O2R	240		DM043O3R	160		DM043O4R	10			410
43, 47, 471	DF043O2R			DF043O3R						10	10
43, 47, 471 -Youth Only	DF043K2R			DF043K3R						10	10
44	DM044O2R	50		DM044O3R	15		DM044O4R	15			80
44	DF044O2R		10	DF044O3R		10					20
48, 56, 481, 561	DM048O2R			DM048O3R						700	700
49, 57, 58, 581	DM049O2R			DM049O3R						1800	1800
49, 57	DF049O2R		10	DF049O3R		10					20
50, 500, 501	DM050O2R	225		DM050O3R	225						450
51	DM051O2R	75		DM051O3R	75		DM051O4R	50			200
52, 411, 521	DM052O2R	490		DM052O3R	160		DM052O4R	15			665
53	DM053O2R	120		DM053O3R	95		DM053O4R	10			225
54	DM054O2R	295		DM054O3R	70		DM054O4R	10			375
55	DM055O2R	190		DM055O3R	55		DM055O4R	10			255
55	DF055O2R		50	DF055O3R		45					95
58, 581	DF058O2R		10	DF058O3R		10					20
59, 511	DM059O2R			DM059O3R						250	250
60	DM060O2R	70		DM060O3R	70		DM060O4R	5			145
61	DM061O2R	115		DM061O3R	110						225
62	DM062O2R	390		DM062O3R	355						745
63	DM063O2R	105		DM063O3R	85		DM063O4R	10			200
64, 65	DM064O2R	300		DM064O3R	270		DM064O4R	10			580
66	DM066O2R	105		DM066O3R	40		DM066O4R	10			155
66	DF066O2R		45	DF066O3R		30					75
67	DM067O2R	105		DM067O3R	40		DM067O4R	10			155
67	DF067O2R		70	DF067O3R		30					100

Unit	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 (2015)
	Hunt Code	Licenses (2015)		Hunt Code	Licenses (2015)		Hunt Code	Licenses (2015)			
		ANTLERED	ANTLERLESS		ANTLERED	ANTLERLESS		ANTLERED	ANTLERLESS		
68, 681, 682	DM068O2R	190		DM068O3R	170		DM068O4R	15			375
69, 84, 86, 691, 861	DM069O2R	365		DM069O3R	365						730
70	DM070O2R	400		DM070O3R	400		DM070O4R	40			840
71, 711	DM071O2R	330		DM071O3R	460		DM071O4R	40			830
72, 73	DM072O2R	280		DM072O3R	350		DM072O4R	55			685
74	DM074O2R			DM074O3R			DM074O4R	50		320	370
75, 751	DM075O2R	405		DM075O3R	335		DM075O4R	90			830
75, 751	DF075O2R			DF075O3R			DF075O4R			10	10
76	DM076O2R	25		DM076O3R	20						45
77, 78, 771	DM077O2R	695		DM077O3R	495		DM077O4R	120			1310
77, 78, 771	DF077O2R			DF077O3R			DF077O4R			10	10
79, 791	DM079O2R	75		DM079O3R	90		DM079O4R	10			175
80, 81	DM080O2R	255		DM080O3R	255		DM080O4R	35			545
82	DM082O2R	140		DM082O3R	100		DM082O4R	5			245
85, 851 except Bosque del Oso SWA	DM085O2R	310		DM085O3R	215						525
131, 231	DM131O2R	50		DM131O3R	25						75
140	DM140O2R	105		DM140O3R	70						175
161	DM161O2R	25		DM161O3R	15						40
171	DM171O2R	15		DM171O3R	15						30
201	DM201O2R	23		DM201O3R	14		DM201O4R	3			40
391, 461	DM391O2R			DM391O3R			DM391O4R	100		200	300
444	DM444O2R	200		DM444O3R	85		DM444O4R	25			310
444	DF444O2R		10	DF444O3R		10					20
501							DM501O4R	30			30
501	DF501O2R		60	DF501O3R		60					120
511							DM511O4R	15			15
511	DF511O2R			DF511O3R						10	10
551	DM551O2R	120		DM551O3R	35		DM551O4R	10			165
551	DF551O2R		30	DF551O3R		25					55
741	DM741O2R			DM741O3R			DM741O4R	20		200	220
851 Bosque del Oso	DM851O1R 10/10/2015-10/14/2015	4		DM851O2R 10/17/2015-10/25/2015	4						8

Unit	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 (2015)
	Hunt Code	Licenses (2015)		Hunt Code	Licenses (2015)		Hunt Code	Licenses (2015)			
		ANTLERED	ANTLERLESS		ANTLERED	ANTLERLESS		ANTLERED	ANTLERLESS		
SWA only											
TOTALS		**14983**	**2265**		**11177**	**1605**		**2390**	**50**	**9120**	**41590**

2. Plains Regular Rifle, Season Dates, Units (as described in Chapter 0 of these regulations), Limited Licenses.

Unit	Season Dates 10/24/2015 – 11/03/2015 Unless Otherwise Shown			
	Hunt Code	Antlered Licenses (2015)	Hunt Code	Antlerless Licenses (2015)
87	DM087O1R	40	DF087O1R	45
88	DM088O1R	30	DF088O1R	45
89	DM089O1R	40	DF089O1R	50
90	DM090O1R	20	DF090O1R	30
91	DM091O1R	20	DF091O1R	50
92	DM092O1R	20	DF092O1R	50
93	DM093O1R	20	DF093O1R	15
94	DM094O1R	30	DF094O1R	30
95	DM095O1R	45	DF095O1R	60
96	DM096O1R	35	DF096O1R	50
97	DM097O1R	20	DF097O1R	15
98	DM098O1R	35	DF098O1R	40
99	DM099O1R	80	DF099O1R	100
100	DM100O1R	30	DF100O1R	30
101	DM101O1R	25	DF101O1R	30
102	DM102O1R	45	DF102O1R	65
103	DM103O1R	25	DF103O1R	80
104	DM104O1R	100	DF104O1R	55
105, 106	DM105O1R	325	DF105O1R	135
107	DM107O1R	75	DF107O1R	50
109	DM109O1R	40	DF109O1R	40
110	DM110O1R	60	DF110O1R	55
111	DM111O1R	25	DF111O1R	15
112	DM112O1R	30	DF112O1R	30
113	DM113O1R	20	DF113O1R	20
114, 115	DM114O1R	65	DF114O1R	70
116	DM116O1R	30	DF116O1R	20
117	DM117O1R	20	DF117O1R	20
118, 123	DM118O1R	70	DF118O1R	20

2. Plains Regular Rifle, Season Dates, Units (as described in Chapter 0 of these regulations), Limited Licenses.				
Unit	**Season Dates 10/24/2015 – 11/03/2015 Unless Otherwise Shown**			
	Hunt Code	**Antlered Licenses (2015)**	**Hunt Code**	**Antlerless Licenses (2015)**
119	DM119O1R	45	DF119O1R	20
120, 121	DM120O1R	50	DF120O1R	60
122	DM122O1R	25	DF122O1R	50
124	DM124O1R	50	DF124O1R	35
125	DM125O1R	15	DF125O1R	20
126	DM126O1R	30	DF126O1R	30
127	DM127O1R	35	DF127O1R	30
128, 129	DM128O1R	90	DF128O1R	50
130	DM130O1R	20	DF130O1R	20
132	DM132O1R	30	DF132O1R	15
133	DM133O1R	20	DF133O1R	10
134	DM134O1R	30	DF134O1R	15
135	DM135O1R	30	DF135O1R	15
136, 147	DM136O1R	85	DF136O1R	10
137	DM137O1R	20	DF137O1R	10
138, 146	DM138O1R	20	DF138O1R	20
139	DM139O1R	25	DF139O1R	15
141	DM141O1R	15	DF141O1R	20
143, 144, 145	DM143O1R	50	DF143O1R	15
951	DM951O1R	60	DF951O1R	35
TOTALS		**2165**		**1810**

3. Regular Plains Whitetail Only Season, Dates, Units (as described in Chapter 0 of these regulations, Limited Licenses				
Unit	**Season Dates: 10/24/2015 – 11/03/2015 Antlerless**		**Season Dates: 10/24/2015 – 11/03/2015 Either-sex**	
	Hunt Code	**Licenses (2015)**	**Hunt Code**	**Licenses (2015)**
104	DF104O2R	45	DE104O2R	5
105, 106	DF105O2R	55	DE105O2R	25
107, 112, 113, 114, 115, 120, 121	DF107O2R	70	DE107O2R	70
109	DF109O2R	50	DE109O2R	50
110, 111, 118, 119, 123, 124	DF110O2R	30	DE110O2R	35
116, 117	DF116O2R	25	DE116O2R	40
122, 126, 127	DF122O2R	10	DE122O2R	55
125, 130	DF125O2R	10	DE125O2R	25
128, 129, 133, 134, 135, 136, 141, 147			DE128O2R	65
132, 139	DF132O2R	10	DE132O2R	30
137, 138, 146	DF137O2R	10	DE137O2R	10

143, 144, 145	DF143O2R	15	DE143O2R	30
TOTALS		**330**		**440**

D. Late Deer Seasons

1. Late Regular Rifle Seasons, Dates, Units (as described in Chapter 0 of these regulations), Licenses.

Unit	Hunt Code	Date Open	Date Closed	Licenses (2015)		
				Antlered	Antlerless	Either-sex
38 Jefferson County portion only	DF038L1R	12/01/2015	01/31/2016		125	
38 Jefferson County portion only	DE038L1R	12/01/2015	01/31/2016			125
56 That portion bounded on the north and east by Colo 291; on the south by US 50; and on the west by Colo 285	DF056L1R	09/01/2015	10/31/2015		80	

Unit	Hunt Code	Date Open	Date Closed	Licenses (2015)		
				Antlered	Antlerless	Either-sex
104 – Those portions bounded on the north by the Arapahoe/ Douglas/ Elbert County lines; on the east by CR 29, CR 33, Colo 86, CR 17/21, CR 15/21; on the south by CR 86/Steele Ave, E. Cherry Creek Rd and E. Jones Rd,; and on the west by Colo 83	DF104L3R	10/01/2015	12/31/2015		400	
211 That portion bounded on the north and east by Moffat Co Rd 17; on the south by Moffat Co Rd 32, and on the west by Moffat Co Rd 55	DF211L1R	12/01/2015	12/31/2015		5	

Unit	Hunt Code	Date Open	Date Closed	Licenses (2015)		
				Antlered	Antlerless	Either-sex
481 – That portion bounded on the north by Chaffee Co Rds 384A and 384; on the east by the Arkansas River; on the south by Chaffee Co Rds 306, 337, Gregg Drive, Chaffee Co Rd 319 and US 24; and on the west by Chaffee Co Rd 361	DF481L1R	09/01/2015	10/31/2015		80	
512	DM512L1R	12/01/2015	12/31/2015	15		
512	DF512L1R	12/01/2015	12/31/2015		15	
591	DM591L1R	10/01/2015	01/31/2016	50		
591	DF591L1R	10/01/2015	01/31/2016		25	
TOTALS				**65**	**730**	**125**

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 (2015)	Hunt Code	Licenses (2015)
87	DM087L1R	40		
88	DM088L1R	35		
89	DM089L1R	50	DF089L1R	50
90	DM090L1R	25	DF090L1R	30
91	DM091L1R	25	DF091L1R	50
92	DM092L1R	25	DF092L1R	50
93	DM093L1R	25	DF093L1R	15
94	DM094L1R	40	DF094L1R	35
95	DM095L1R	55	DF095L1R	60
96	DM096L1R	45	DF096L1R	50
97	DM097L1R	25	DF097L1R	15
98	DM098L1R	40	DF098L1R	40
99	DM099L1R	90	DF099L1R	100
100	DM100L1R	40	DF100L1R	30
101	DM101L1R	30	DF101L1R	30
102	DM102L1R	55	DF102L1R	65
103	DM103L1R	10	DF103L1R	40
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	100
104	DM104L1R	60	DF104L1R	90
105, 106	DM105L1R	80	DF105L1R	105
107	DM107L1R	40	DF107L1R	25
109	DM109L1R	30	DF109L1R	20
116	DM116L1R	25	DF116L1R	10
117	DM117L1R	20	DF117L1R	15
122	DM122L1R	10	DF122L1R	15
125	DM125L1R	10	DF125L1R	10
126	DM126L1R	20	DF126L1R	20
127	DM127L1R	20	DF127L1R	30
129	DM129L1R	10	DF129L1R	10
130	DM130L1R	15	DF130L1R	15
132	DM132L1R	10	DF132L1R	15
136, 147	DM136L1R	15		
136			DF136L1R	10
137	DM137L1R	10	DF137L1R	10
138, 146	DM138L1R	20	DF138L1R	15
139	DM139L1R	10	DF139L1R	15
141	DM141L1R	10	DF141L1R	10
142	DM142L1R	20	DF142L1R	20
143	DM143L1R	20	DF143L1R	10

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 (2015)	Hunt Code	Licenses (2015)
144	DM144L1R	20	DF144L1R	10
145	DM145L1R	20	DF145L1R	5
147			DF147L1R	10
951	DM951L1R	75	DF951L1R	50
TOTALS		**1225**		**1305**

3. Late Plains Whitetail Only Season, Dates, Units (as described in Chapter 0 of these regulations, Limited Licenses

Unit	Season Dates: 12/01/2015 – 12/14/2015 Antlerless		Season Dates: 12/01/2015 – 12/14/2015 Either-sex	
	Hunt Code	Licenses (2015)	Hunt Code	Licenses (2015)
104	DF104L2R	45	DE104L2R	10
105, 106	DF105L2R	55	DE105L2R	25
107	DF107L2R	40	DE107L2R	55
109	DF109L2R	30	DE109L2R	40
116, 117	DF116L2R	15	DE116L2R	35
122, 126, 127	DF122L2R	10	DE122L2R	25
125, 130	DF125L2R	10	DE125L2R	25
129	DF129L2R	25	DE129L2R	10
132, 139	DF132L2R	10	DE132L2R	20
136, 141, 147	DF136L2R	10	DE136L2R	10
137, 138, 146	DF137L2R	10	DE137L2R	15
143, 144, 145	DF143L2R	25	DE143L2R	25
TOTALS		**285**		**295**

4. Season-Choice Whitetail Only Deer Seasons, Dates, Units (as described in Chapter 0 of these regulations). Licenses are valid during Archery, Muzzleloader, Regular Rifle and Late Rifle seasons until filled, License holders must comply with all applicable season restrictions, including but not limited to, applicable season dates and manner of take restrictions.

		Archery		Muzzleloader		Rifle		Licenses (2015)	
Unit	Hunt Code	Date Open	Date Closed	Date Open	Date Closed	Date Open	Date Closed	Antler-less	Either Sex
89, 90, 95	DE089S2R	10/01/2015 11/04/2015 12/15/2015	10/23/2015 11/30/2015 12/31/2015	10/10/2015	10/18/2015	10/24/2015 12/01/2015	11/03/2015 12/14/2015		150
89, 90, 95	DF089S2R	10/01/2015 11/04/2015 12/15/2015	10/23/2015 11/30/2015 12/31/2015	10/10/2015	10/18/2015	10/24/2015 12/01/2015	11/03/2015 12/14/2015	150	
93, 97, 98, 99, 100	DE093S2R	10/01/2015 11/04/2015 12/15/2015	10/23/2015 11/30/2015 12/31/2015	10/10/2015	10/18/2015	10/24/2015 12/01/2015	11/03/2015 12/14/2015		150

4. Season-Choice Whitetail Only Deer Seasons, Dates, Units (as described in Chapter 0 of these regulations). Licenses are valid during Archery, Muzzleloader, Regular Rifle and Late Rifle seasons until filled, License holders must comply with all applicable season restrictions, including but not limited to, applicable season dates and manner of take restrictions.

		Archery		Muzzleloader		Rifle		Licenses (2015)	
Unit	**Hunt Code**	**Date Open**	**Date Closed**	**Date Open**	**Date Closed**	**Date Open**	**Date Closed**	**Antler-less**	**Either Sex**
93. 97, 98, 99, 100	DF093S2R	10/01/2015 11/04/2015 12/15/2015	10/23/2015 11/30/2015 12/31/2015	10/10/2015	10/18/2015	10/24/2015 12/01/2015	11/03/2015 12/14/2015	150	
101, 102	DE101S2R	10/01/2015 11/04/2015 12/15/2015	10/23/2015 11/30/2015 12/31/2015	10/10/2015	10/18/2015	10/24/2015 12/01/2015	11/03/2015 12/14/2015		100
101, 102	DF101S2R	10/01/2015 11/04/2015 12/15/2015	10/23/2015 11/30/2015 12/31/2015	10/10/2015	10/18/2015	10/24/2015 12/01/2015	11/03/2015 12/14/2015	120	
TOTALS								**420**	**400**

E. Private-Land-Only Deer Seasons

1. Private Land Only, Season Dates, Units (as described in Chapter 0 of these regulations), Limited Licenses.

a. All applicants for “Private Land Only" licenses must obtain permission to hunt from at least one private landowner within the game management unit prior to applying for a license.

b. Private land only licenses are valid on all private land within the game management unit upon which the license holder has permission to hunt.

Unit	Season Dates: 10/17/2015 – 10/25/2015			Season Dates: 10/31/2015 – 11/08/2015			Season Dates: 11/11/2015 – 11/15/2015			Float (2015)	Hunt Code	Season Dates	Licenses (2015)		Total (2015)
	Licenses (2015)			Licenses (2015)			Licenses (2015)								
	Hunt Code			Hunt Code			Hunt Code								
	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex				Antlered	Antler-less	
3, 4, 5, 14, 214, 301, 441	DE003P2R		425	DE003P3R		425									850
9											DF009P5R	09/01/2015-01/31/2016		75	75
11, 12, 13, 22, 23, 24, 211	DE011P2R		225	DE011P3R		300									525
15	DE015P2R			DE015P3R						140					140
18, 27, 28, 37, 181, 371	DE018P2R			DE018P3R						350					350

1. Private Land Only, Season Dates, Units (as described in Chapter 0 of these regulations), Limited Licenses.

a. All applicants for “Private Land Only" licenses must obtain permission to hunt from at least one private landowner within the game management unit prior to applying for a license.

b. Private land only licenses are valid on all private land within the game management unit upon which the license holder has permission to hunt.

Unit	Season Dates: 10/17/2015 – 10/25/2015			Season Dates: 10/31/2015 – 11/08/2015			Season Dates: 11/11/2015 – 11/15/2015			Float (2015)	Hunt Code	Season Dates	Licenses (2015)		Total (2015)
	Licenses (2015)			Licenses (2015)			Licenses (2015)								
	Hunt Code			Hunt Code			Hunt Code								
	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex				Antlered	Antler-less	
20											DM020P5R	10/17/2015-11/30/2015	500		500
20											DF020P5R	09/01/2015-11/30/2015		500	500
25, 26	DE025P2R			DE025P3R						100					100
29											DM029P5R	10/17/2015-11/30/2015	175		175
29											DF029P5R	09/01/2015-11/30/2015		275	275
31, 32	DM031P2R			DM031P3R						60					60
33	DM033P2R			DM033P3R						35					35
33											DF033P5R	12/01/2015-01/31/2016		25	25
33 - Those portions bounded on the north by Co Rd											DF033P6R	08/15/2015-01/31/2016		150	150

1. Private Land Only, Season Dates, Units (as described in Chapter 0 of these regulations), Limited Licenses.

a. All applicants for “Private Land Only" licenses must obtain permission to hunt from at least one private landowner within the game management unit prior to applying for a license.

b. Private land only licenses are valid on all private land within the game management unit upon which the license holder has permission to hunt.

Unit	Season Dates: 10/17/2015 – 10/25/2015			Season Dates: 10/31/2015 – 11/08/2015			Season Dates: 11/11/2015 – 11/15/2015			Float (2015)	Hunt Code	Season Dates	Licenses (2015)		Total (2015)
	Licenses (2015)			Licenses (2015)			Licenses (2015)								
	Hunt Code			Hunt Code			Hunt Code								
	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex				Antlered	Antler-less	
226 and Co Rd 245 ; on the east by Elk Creek ; on the south by the Colorado River ; and on the west by Colo 13 and Colo 325.															
34	DE034P2R			DE034P3R						35					35
35, 36,	DE035P2R			DE035P3R						100					100

1. Private Land Only, Season Dates, Units (as described in Chapter 0 of these regulations), Limited Licenses.

a. All applicants for “Private Land Only" licenses must obtain permission to hunt from at least one private landowner within the game management unit prior to applying for a license.

b. Private land only licenses are valid on all private land within the game management unit upon which the license holder has permission to hunt.

Unit	Season Dates: 10/17/2015 – 10/25/2015			Season Dates: 10/31/2015 – 11/08/2015			Season Dates: 11/11/2015 – 11/15/2015			Float (2015)	Hunt Code	Season Dates	Licenses (2015)		Total (2015)
	Licenses (2015)			Licenses (2015)			Licenses (2015)								
	Hunt Code			Hunt Code			Hunt Code								
	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex				Antlered	Antler-less	
45,															
38											DM038P5R	10/17/2015-11/30/2015		275	275
38											DF038P5R	09/01/2015-11/30/2015		400	400
39, 46											DF039P5R	09/01/2015-01/31/2016		55	55
40	DM040P2R			DM040P3R											50
	25			25											
41, 42, 421	DM041P2R			DM041P3R											280
	110			170											
43, 47, 471	DE043P2R			DE043P3R						50					50
44	DE044P2R			DE044P3R											20
			10			10									
49, 57	DF049P2R			DF049P3R											100
		50			50										
51											DM051P5R	10/17/2015-11/15/2015	75		75
51											DF051P5R	09/01/2015-01/31/2016		125	125
52, 411, 521	DM052P2R			DM052P3R						70					70

1. Private Land Only, Season Dates, Units (as described in Chapter 0 of these regulations), Limited Licenses.

a. All applicants for “Private Land Only" licenses must obtain permission to hunt from at least one private landowner within the game management unit prior to applying for a license.

b. Private land only licenses are valid on all private land within the game management unit upon which the license holder has permission to hunt.

Unit	Season Dates: 10/17/2015 – 10/25/2015			Season Dates: 10/31/2015 – 11/08/2015			Season Dates: 11/11/2015 – 11/15/2015			Float (2015)	Hunt Code	Season Dates	Licenses (2015)		Total (2015)
	Licenses (2015)			Licenses (2015)			Licenses (2015)								
	Hunt Code			Hunt Code			Hunt Code								
	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex				Antlered	Antler-less	
52											DF052P5R	09/01/2015-10/31/2015		75	75
53	DM053P2R			DM053P3R						40					40
53											DF053P5R	09/01/2015-10/31/2015		40	40
56	DF056P2R			DF056P3R											50
		25			25										
60	DM060P2R			DM060P3R											20
	10			10											
60	DF060P2R			DF060P3R											10
		5			5										
62	DM062P2R			DM062P3R											55
	30			25											
62	DF062P2R			DF062P3R											85
		55			30										
63	DM063P2R			DM063P3R						75					75
63											DF063P5R	09/01/2015-10/31/2015		50	50
64, 65	DM064P2R			DM064P3R											95
	50			45											
69, 84, 86, 691,	DM069P2R			DM069P3R											820
	410			410											

1. Private Land Only, Season Dates, Units (as described in Chapter 0 of these regulations), Limited Licenses.

a. All applicants for “Private Land Only" licenses must obtain permission to hunt from at least one private landowner within the game management unit prior to applying for a license.

b. Private land only licenses are valid on all private land within the game management unit upon which the license holder has permission to hunt.

Unit	Season Dates: 10/17/2015 – 10/25/2015			Season Dates: 10/31/2015 – 11/08/2015			Season Dates: 11/11/2015 – 11/15/2015			Float (2015)	Hunt Code	Season Dates	Licenses (2015)		Total (2015)
	Licenses (2015)			Licenses (2015)			Licenses (2015)								
	Hunt Code			Hunt Code			Hunt Code								
	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex				Antlered	Antler-less	
861															
69, 84, 86, 691, 861	DF069P2R			DF069P3R											
		50			50										100
70	DM070P2R			DM070P3R						265					265
70	DF070P2R			DF070P3R											
		20			20										40
71, 711	DM071P2R			DM071P3R											70
	45			25											
72, 73 south of Colo 184 and US 160											DF072P5R	09/01/2015-09/30/2015		50	50
72, 73	DM072P2R			DM072P3R											115
	50			65											
74	DM074P2R			DM074P3R						20					20
75, 751	DM075P2R			DM075P3R			DM075P4R			75					115
							40								

1. Private Land Only, Season Dates, Units (as described in Chapter 0 of these regulations), Limited Licenses.

a. All applicants for “Private Land Only" licenses must obtain permission to hunt from at least one private landowner within the game management unit prior to applying for a license.

b. Private land only licenses are valid on all private land within the game management unit upon which the license holder has permission to hunt.

Unit	Season Dates: 10/17/2015 – 10/25/2015			Season Dates: 10/31/2015 – 11/08/2015			Season Dates: 11/11/2015 – 11/15/2015			Float (2015)	Hunt Code	Season Dates	Licenses (2015)		Total (2015)
	Licenses (2015)			Licenses (2015)			Licenses (2015)								
	Hunt Code			Hunt Code			Hunt Code								
	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex				Antlered	Antler-less	
75, 751	DF075P2R			DF075P3R			DF075P4R			30					30
75 and 751-S of US 160 Only											DF075P5R	12/01/2015-01/15/2016		175	175
77, 78, 771	DM077P2R			DM077P3R			DM077P4R			70					95
							25								
77, 78, 771											DF077P5R	12/01/2015-01/15/2016		75	75
79											DF079P5R	09/01/2015-12/31/2015		50	50
83	DM083P2R			DM083P3R			DM083P4R								65
	30			30			5								

1. Private Land Only, Season Dates, Units (as described in Chapter 0 of these regulations), Limited Licenses.

a. All applicants for “Private Land Only" licenses must obtain permission to hunt from at least one private landowner within the game management unit prior to applying for a license.

b. Private land only licenses are valid on all private land within the game management unit upon which the license holder has permission to hunt.

Unit	Season Dates: 10/17/2015 – 10/25/2015			Season Dates: 10/31/2015 – 11/08/2015			Season Dates: 11/11/2015 – 11/15/2015			Float (2015)	Hunt Code	Season Dates	Licenses (2015)		Total (2015)
	Licenses (2015)			Licenses (2015)			Licenses (2015)								
	Hunt Code			Hunt Code			Hunt Code								
	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex				Antlered	Antler-less	
85 - Those portions bounded on the north by Colo 160; on the east by Co Rd 350 and Wahatoya Creek; on the south by Co Rd 362, 360 and											DF085P5R	09/01/2015-12/31/2015		55	55

1. Private Land Only, Season Dates, Units (as described in Chapter 0 of these regulations), Limited Licenses.

a. All applicants for “Private Land Only" licenses must obtain permission to hunt from at least one private landowner within the game management unit prior to applying for a license.

b. Private land only licenses are valid on all private land within the game management unit upon which the license holder has permission to hunt.

Unit	Season Dates: 10/17/2015 – 10/25/2015			Season Dates: 10/31/2015 – 11/08/2015			Season Dates: 11/11/2015 – 11/15/2015			Float (2015)	Hunt Code	Season Dates	Licenses (2015)		Total (2015)
	Licenses (2015)			Licenses (2015)			Licenses (2015)								
	Hunt Code			Hunt Code			Hunt Code								
	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex				Antlered	Antler-less	
the fenceline on the south side of LaVeta Town Lakes and golf course from the intersection of Co Rds 360 and 361 to Colo 12, and Co Rd 420;															

1. Private Land Only, Season Dates, Units (as described in Chapter 0 of these regulations), Limited Licenses.

a. All applicants for “Private Land Only" licenses must obtain permission to hunt from at least one private landowner within the game management unit prior to applying for a license.

b. Private land only licenses are valid on all private land within the game management unit upon which the license holder has permission to hunt.

Unit	Season Dates: 10/17/2015 – 10/25/2015			Season Dates: 10/31/2015 – 11/08/2015			Season Dates: 11/11/2015 – 11/15/2015			Float (2015)	Hunt Code	Season Dates	Licenses (2015)		Total (2015)
	Licenses (2015)			Licenses (2015)			Licenses (2015)								
	Hunt Code			Hunt Code			Hunt Code								
	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex				Antlered	Antler-less	
and on the east by Colo 12, and Co Rds 430, 440 and 451.															
91											DM091P5R	12/01/2015-12/14/2015	35		35
92											DM092P5R	12/01/2015-12/14/2015	30		30
96											DM096P5R	12/01/2015-12/14/2015	50		50
103											DM103P5R	12/01/2015-12/14/2015	30		30
103											DF103P5R	12/01/2015-12/14/2015		80	80
131, 231	DE131P2R		35	DE131P3R		20									55
143, 144, 145											DM143P1R	10/24/2015-11/03/2015	80		80

1. Private Land Only, Season Dates, Units (as described in Chapter 0 of these regulations), Limited Licenses.

a. All applicants for “Private Land Only" licenses must obtain permission to hunt from at least one private landowner within the game management unit prior to applying for a license.

b. Private land only licenses are valid on all private land within the game management unit upon which the license holder has permission to hunt.

Unit	Season Dates: 10/17/2015 – 10/25/2015			Season Dates: 10/31/2015 – 11/08/2015			Season Dates: 11/11/2015 – 11/15/2015			Float (2015)	Hunt Code	Season Dates	Licenses (2015)		Total (2015)
	Licenses (2015)			Licenses (2015)			Licenses (2015)								
	Hunt Code			Hunt Code			Hunt Code								
	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex				Antlered	Antler-less	
143, 144, 145											DF143P1R	10/24/2015-11/03/2015		25	25
391, 461											DM391P5R	10/17/2015-11/15/2015	350		350
391, 461											DF391P5R	09/01/2015-01/31/2016		175	175
411											DF411P5R	09/01/2015-10/31/2015		40	40
444	DE444P2R			DE444P3R											
			100			50									150
481	DF481P2R			DF481P3R											
		25			25										50
511	DF511P2R			DF511P3R						30					
															30
511							DM511P4R								
							20								20
711											DF711P5R	09/01/2015-09/30/2015		20	20
741	DM741P2R			DM741P3R			DM741P4R			200					
							30								230
741	DF741P2R			DF741P3R			DF741P4R			200					
															200
791											DF791P5R	09/01/2015-12/31/2015		25	25
TOTALS	**760**	**230**	**795**	**805**	**205**	**805**	**120**	**0**	**0**	**1945**			**1325**	**2815**	**9805**

2. Season-Choice Private Land Only Seasons, Dates, Units (as described in Chapter 0 of these regulations). Licenses are valid during Archery, Muzzleloader, Regular Rifle and Late Rifle seasons until filled, License holders must comply with all applicable season restrictions, including but not limited to, applicable season dates and manner of take restrictions.

		Archery		Muzzleloader		Rifle		Licenses (2015) Antlerless
Unit	Hunt Code	Date Open	Date Closed	Date Open	Date Closed	Date Open	Date Closed	
91	DF091S3R	10/01/2015 11/04/2015 12/15/2015	10/23/2015 11/30/2015 12/31/2015	10/10/2015	10/18/2015	10/24/2015 12/01/2015 01/01/2016	11/03/2015 12/14/2015 01/31/2016	90
92	DF092S3R	10/01/2015 11/04/2015 12/15/2015	10/23/2015 11/30/2015 12/31/2015	10/10/2015	10/18/2015	10/24/2015 12/01/2015 01/01/2016	11/03/2015 12/14/2015 01/31/2016	100
96	DF096S3R	10/01/2015 11/04/2015 12/15/2015	10/23/2015 11/30/2015 12/31/2015	10/10/2015	10/18/2015	10/24/2015 12/01/2015 01/01/2016	11/03/2015 12/14/2015 01/31/2016	15
96 - East of Hwy 71	DF096S5R	10/01/2015 11/04/2015 12/15/2015	10/23/2015 11/30/2015 12/31/2015	10/10/2015	10/18/2015	10/24/2015 12/01/2015 01/01/2016	11/03/2015 12/14/2015 01/31/2016	125
TOTAL								**330**

ARTICLE IX - ELK

#254 - ANTLER POINT RESTRICTIONS BY UNIT - ELK

A. All antlered elk taken in the following game management units during any established season, including archery, muzzle-loading rifle or rifle seasons, shall have four (4) or more points or a brow tine on one antler: GMU's 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 41, 42, 43, 44, 45, 47, 52, 53, 54, 55, 59, 60, 62, 63, 64, 65, 66, 67, 68, 70, 71, 72, 73, 74, 75, 77, 78, 79, 80, 81, 82, 83, 85, 86, 131, 140, 161, 171, 181, 191, 211, 214, 231, 301, 361, 371, 411, 421, 441, 444, 471, 511, 521, 551, 581, 681, 691, 711, 741, 751, 771, 851, and 861.

B. There are no antler point restrictions for elk taken during any established season, including archery, muzzle-loading rifle or rifle seasons, in the following game management units: 1, 2, 10, 20, 29, 39, 40, 46, 48, 49, 50, 51, 56, 57, 58, 61, 69, 76, 84, 201, 391, 461, 481, 500, 501, 561, 591, 682, 791, or in any unit east of I-25 except 140.

C. There are no antler point restrictions for elk on Wildlife Ranching properties during Wildlife Ranching seasons.

#255 - ARCHERY ELK SEASONS - ONLY LAWFUL HAND HELD BOWS MAY BE USED TO HUNT OR TAKE ELK DURING THE FOLLOWING SEASONS:

A. Early Seasons - None

B. Regular Archery Elk Seasons

1. Archery Season Dates, Units (as described in Chapter 0 of these regulations), Limited or Unlimited License as shown by hunt code

Unit(s)	Season Dates: 08/29/2015 – 09/27/2015 Unless Otherwise Shown				
	Hunt Code	License Numbers (2015)			
		Antlered	Antler-less	Limited Either Sex	Unlimited Either Sex
3, 6, 11, 13, 14, 15, 16, 17, 18, 21, 22, 25, 26, 27, 28, 30, 31, 32, 34, 35, 36, 37, 38, 41, 42, 43, 44, 45, 47, 52, 53, 59, 60, 62, 63, 64, 65, 68, 70, 71, 72, 73, 74, 75, 77, 78, 79, 80, 81, 82, 83, 85, 86, 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, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 161, 171, 181, 211, 214, 231, 301, 361, 371, 411, 421, 444, 471, 511, 521, 581, 591, 681, 691, 711, 741, 751, 771, 851 except Bosque del Oso SWA, 861, 951, private land portions of 4, 5, 12, 23, 24, 33, and 441	EE000U1A				Unlimited
3, 6, 11, 13, 14, 15, 16, 17, 18, 21, 22, 25, 26, 27, 28, 30, 31, 32, 34, 35, 36, 37, 41, 42, 43, 44, 45, 47, 52, 59, 82, 83, 85, 86, 131, 133, 134, 140, 141, 142, 161, 171, 181, 211, 214, 231, 301, 361, 371, 411, 421, 444, 471, 511, 521, 581, 591, 682, 691, 791, 851 except Bosque del Oso SWA, 861, private land portions of 4, 5,12, 23, 24, 33, and 441	EF000U1A		Unlimited		
1	EE001O1A			2	
2	EE002O1A			9	
Public and private lands in 4, 5, 441	EE004O1A			450	
7, 8, 9, 19, 191	EE007O1A			1000	
10	EE010O1A			15	
12, 23 north of the White River, and 24 north of the North Fork of the White River	EE012O1A			630	
20	EM020O1A	5			
20	EF020O1A		15		
20 excluding the area around the town of Estes Park bounded by Rocky Mountain National Park on the north and west and by the boundary of Roosevelt National Forest on the north, east and south	EE020O1A			105	
29	EE029O1A			30	
33, 23 south of the White River, and 24 south of the North Fork of the White River	EE033O1A			1050	

Unit(s)	Season Dates: 08/29/2015 – 09/27/2015 Unless Otherwise Shown				
	Hunt Code	License Numbers (2015)			
		Antlered	Antler-less	Limited Either Sex	Unlimited Either Sex
39	EE039O1A			90	
40	EE040O1A			85	
46	EE046O1A			60	
48	EE048O1A			100	
49	EE049O1A			170	
50	EE050O1A			125	
51	EE051O1A			100	
54	EE054O1A			405	
55	EE055O1A			665	
56	EE056O1A			100	
57, 58	EE057O1A			180	
61	EE061O1A			95	
66	EE066O1A			170	
67	EE067O1A			65	
69, 84	EE069O1A			180	
76	EE076O1A			160	
104	EE104O1A			25	
201	EE201O1A			9	
391	EE391O1A			50	
461	EE461O1A			55	
481	EE481O1A			100	
500	EE500O1A			135	
501	EE501O1A			85	
551	EE551O1A			230	
561	EE561O1A			70	
851 Bosque del Oso SWA only	EE851O1A			8	
TOTALS		**5**	**15**	**6808**	

#256 - MUZZLE LOADING FIREARMS (RIFLE AND SMOOTHBORE MUSKET) ELK SEASON - ONLY LAWFUL MUZZLE-LOADING FIREARMS MAY BE USED TO HUNT OR TAKE ELK DURING THE FOLLOWING SEASONS:

A. Regular Muzzle-loading Elk Seasons

1. Muzzle-loading Season Dates, Units (as described in Chapter 0 of these regulations), Limited License Types and Numbers

Unit	Season Dates 09/12/2015 – 09/20/2015 Unless Otherwise Shown			
	Hunt Code	Licenses (2015)		
		Antlered	Antlerless	Limited Either Sex
1	EM001O1M	4		
1	EF001O1M		5	
2	EM002O1M	10		
2	EF002O1M		5	

Unit	Season Dates 09/12/2015 – 09/20/2015 Unless Otherwise Shown			
	Hunt Code	Licenses (2015)		
		Antlered	Antlerless	Limited Either Sex
3, 301	EE003O1M			10
3, 301	EF003O1M		10	
4, 5, and 441	EE004O1M			100
4, 5, and 441	EF004O1M		110	
6, 16, 17, 161, 171	EE006O1M			300
6, 16, 17, 161, 171	EF006O1M		250	
7, 8, 9, 19, 191	EM007O1M	300		
7, 8, 9, 19, 191	EF007O1M		375	
10	EM010O1M	5		
10	EF010O1M		5	
11, 13, 131, 211	EE011O1M			100
11, 13, 131, 211	EF011O1M		100	
12, 23 north of the White River, and 24 north of the North Fork of the White River	EE012O1M			100
12, 23 north of the White River, and 24 north of the North Fork of the White River	EF012O1M		100	
14, 214	EE014O1M			275
14, 214	EF014O1M		75	
15, 27	EE015O1M			300
15, 27	EF015O1M		100	
18, 181	EE018O1M			385
18, 181	EF018O1M		180	
20	EM020O1M	35		
20	EF020O1M		20	
21, 22, 30, 31, 32	EE021O1M			175
21, 22, 30, 31, 32	EF021O1M		150	
25, 26, 34, 231	EE025O1M			175
25, 26, 34, 231	EF025O1M		175	
28, 37, 371	EE028O1M			440
28, 37, 371	EF028O1M		165	
29	EM029O1M	30		
29	EF029O1M		30	
33, 23 south of the White River, and 24 south of the North Fork of the White River	EE033O1M			100
33, 23 south of the White River, and 24 south of the North Fork of the White River	EF033O1M		100	
35, 36, 361	EM035O1M	165		
35, 36, 361	EF035O1M		225	
38	EM038O1M	30		
38	EF038O1M		50	
39	EM039O1M	70		
39	EF039O1M		45	
40	EE040O1M			45
40	EF040O1M		30	

Unit	Season Dates 09/12/2015 – 09/20/2015 Unless Otherwise Shown			
	Hunt Code	Licenses (2015)		
		Antlered	Antlerless	Limited Either Sex
41, 42, 52, 411, 421, 521	EM041O1M	550		
41, 42, 52, 411, 421, 521	EF041O1M		880	
43, 471	EM043O1M	150		
43, 471	EF043O1M		40	
44, 45, 47, 444	EM044O1M	350		
44, 45, 47, 444	EF044O1M		250	
46	EM046O1M	30		
46	EF046O1M		15	
48	EM048O1M	35		
48	EF048O1M		30	
49	EM049O1M	70		
49	EF049O1M		60	
50	EM050O1M	35		
50	EF050O1M		40	
51	EM051O1M	30		
51	EF051O1M		40	
53	EM053O1M	85		
53	EF053O1M		100	
54	EE054O1M			70
54	EF054O1M		100	
55	EE055O1M			115
55	EF055O1M		190	
56	EM056O1M	35		
56	EF056O1M		30	
57, 58	EM057O1M	100		
57, 58	EF057O1M		80	
59, 511, 581, 591	EE059O1M			100
59, 511, 581, 591	EF059O1M		120	
60	EM060O1M	15		
60	EF060O1M		15	
61	EM061O1M	50		
61	EF061O1M		55	
62	EM062O1M	115		
62	EF062O1M		110	
63	EM063O1M	35		
63	EF063O1M		55	
64, 65	EM064O1M	110		
64, 65	EF064O1M		110	
66	EM066O1M	35		
66	EF066O1M		40	
67	EM067O1M	35		
67	EF067O1M		40	
68, 681	EM068O1M	85		
68, 681	EF068O1M		135	
69, 84	EM069O1M	65		
69, 84	EF069O1M		40	
70	EE070O1M			175
70	EF070O1M		145	

Unit	Season Dates 09/12/2015 – 09/20/2015 Unless Otherwise Shown			
	Hunt Code	Licenses (2015)		
		Antlered	Antlerless	Limited Either Sex
71, 72, 73, 711	EE071O1M			220
71, 72, 73, 711	EF071O1M		185	
74, 741	EE074O1M			100
74, 741	EF074O1M		25	
75, 751	EE075O1M			100
75, 751	EF075O1M		60	
76	EM076O1M	70		
76	EF076O1M		15	
77, 78, 771	EE077O1M			150
77, 78, 771	EF077O1M		60	
79	EM079O1M	15		
79	EF079O1M		25	
80, 81	EM080O1M	115		
80, 81	EF080O1M		175	
82	EE082O1M			75
82	EF082O1M		30	
85, 140, 851 Except Bosque del Oso SWA	EE085O1M			130
85, 140, 851 Except Bosque del Oso SWA	EF085O1M		130	
86, 691, 861	EM086O1M	90		
86, 691, 861	EF086O1M		80	
104	EM104O1M	25		
104	EF104O1M		30	
128	EE128O1M			50
133, 134, 141, 142	EE133O1M			10
133, 134, 141, 142	EF133O1M		10	
201	EM201O1M	10		
201	EF201O1M		5	
391	EM391O1M	40		
391	EF391O1M		40	
461	EM461O1M	30		
461	EF461O1M		25	
481	EM481O1M	35		
481	EF481O1M		30	
500	EM500O1M	50		
500	EF500O1M		65	
501	EM501O1M	35		
501	EF501O1M		40	
551	EE551O1M			45
551	EF551O1M		90	
561	EM561O1M	35		
561	EF561O1M		20	
682, 791	EF682O1M		10	
851 Bosque del Oso SWA only	EM851O1M	5		
851 Bosque del Oso SWA only	EF851O1M		5	
Limited License Totals		**3219**	**6180**	**3845**

B. Private Land Only Muzzle-loading Elk Seasons

1. Muzzle-loading Season Dates, Units (as described in Section #020 of these regulations), Limited License Types and Numbers

Unit	Hunt Code	Season Dates 09/12/2015 – 09/20/2015 Unless Otherwise Shown	
		Licenses (2015)	
		Antlerless	Either Sex
4, 5, 441	EE004P1M		50
4, 5, 441	EF004P1M	50	
12, 13, 23, 24, 33	EE012P1M		50
12, 13, 23, 24, 33	EF012P1M	100	
83	EE083P1M		45
83	EF083P1M	10	
TOTALS		**160**	**145**

#257 - RIFLE AND ASSOCIATED METHODS ELK SEASONS - ANY LAWFUL METHOD OF TAKE PERMITTED DURING THESE SEASONS

A. Early Rifle Elk Seasons

1. Early Season Dates, Units (as described in Chapter 0 of these regulations), Limited Licenses.

Unit	Hunt Code	Date Open	Date Closed	Licenses (2015)		
				Antlered	Antlerless	Either Sex
1	EE001E1R	10/01/2015	10/11/2015			11
2	EE002E1R	10/01/2015	10/11/2015			32
2, 3, 11 - Those portions bounded on the north by Moffat Co Rd 4; on the east by Moffat Co Rd 7, Moffat Co Rd 21, Moffat Co Rd 19 and Yampa River; on the south by US 40; and on the west by Twelve Mile Gulch, Yampa River, Little Snake River, Moffat Co Rd 75 and Moffat Co Rd 66	EF003E1R	08/15/2015	10/31/2015		25	
10	EE010E1R	10/01/2015	10/11/2015			32
45	EF045E1R	09/15/2015	09/30/2015		80	
76	EM076E1R	10/01/2015	10/07/2015	20		
201	EE201E1R	10/01/2015	10/11/2015			28

Unit	Hunt Code	Date Open	Date Closed	Licenses (2015)		
				Antlered	Antlerless	Either Sex
TOTALS				**20**	**105**	**103**

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 (2015)	Total Licenses (2015), unless otherwise shown
	License #s (2015)	License #s (2015)	License #s (2015)	License #s (2015)		
	Hunt Code	Hunt Code	Hunt Code	Hunt Code		
3, 4, 5, 6, 11, 12, 13, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 26, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 41, 42, 43, 44, 45, 47, 52, 53, 55, 59, 60, 62, 63, 64, 65, 68, 70, 71, 72, 73, 74, 75, 77, 78, 80, 81, 82, 83, 85, 86, 131, 133, 134, 140, 141, 142, 161, 171, 181, 211, 214, 231, 301, 361, 371, 411, 421, 441, 444, 471, 511, 521, 551, 581, 591, 681, 691, 711, 741, 751, 771, 851 except Bosque del Oso SWA, 861		EM000U2R Unlimited Antlered				Unlimited
3, 4, 5, 6, 11, 12, 13, 14, 15, 16, 17, 18,			EM000U3R Unlimited			Unlimited

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 (2015)**	**Total Licenses (2015), unless otherwise shown**
	License #s (2015)	**License #s (2015)**	**License #s (2015)**	**License #s (2015)**		
	Hunt Code	**Hunt Code**	**Hunt Code**	**Hunt Code**		
21, 22, 23, 24, 25, 26, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 41, 42, 43, 44, 45, 47, 52, 53, 54, 55, 59, 60, 62, 63, 64, 65, 68, 70, 71, 72, 73, 74, 75, 77, 78, 80, 81, 82, 83, 85, 86, 131, 133, 134, 140, 141, 142, 161, 171, 181, 211, 214, 231, 301, 361, 371, 411, 421, 441, 444, 471, 511, 521, 551, 581, 591, 681, 691, 711, 741, 751, 771, 851 except Bosque del Oso SWA, 861			Antlered			
128	EM128U5R Unlimited Antlered 10/10/2015-11/15/2015					Unlimited
87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 105, 106, 107, 109, 110, 111,	EE087U5R Unlimited Either-Sex 09/01/2015 – 01/31/2016					Unlimited

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 (2015)**	**Total Licenses (2015), unless otherwise shown**
	License #s (2015)	**License #s (2015)**	**License #s (2015)**	**License #s (2015)**		
	Hunt Code	**Hunt Code**	**Hunt Code**	**Hunt Code**		
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, 951						
54		EE054U2R Over-the-Counter Either-Sex with Cap				
		450				450
TOTALS		**450**				**450**

#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 (2015)	Total Licenses (2015)
	License #s (2015)			License #s (2015)			License #s (2015)			License #s (2015)				
	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												500
		500												
3, 4, 5, 301, 441											EF003O4R			500
											500			
4, 441											EM004O4R			350
										350				
4, 441					EF004O2R			EF004O3R					700	700
5											EM005O4R			10
										10				
5					EF005O2R			EF005O3R					100	100
6											EE006O4R			80

#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 (2015)	Total Licenses (2015)
	License #s (2015)			License #s (2015)			License #s (2015)			License #s (2015)				
	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		
												80		
6							EF006O3R			EF006O4R				
								225			110			335
6, 16, 17, 161, 171	EE006O1R													
			690											690
6, 16, 17, 161, 171	EF006O1R			EF006O2R										
		1610			1580									3190
7, 8	EM007O1R			EM007O2R			EM007O3R			EM007O4R				
	280												1250	1530
7, 8				EF007O2R			EF007O3R			EF007O4R				
													325	325
9	EM009O1R			EM009O2R			EM009O3R			EM009O4R				
	80												160	240
10	EF010O1R			EF010O2R			EF010O3R			EF010O4R				
		55			60			75			85			275
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 (2015)	Total Licenses (2015)
	License #s (2015)			License #s (2015)			License #s (2015)			License #s (2015)				
	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 (2015)	Total Licenses (2015)
	License #s (2015)			License #s (2015)			License #s (2015)			License #s (2015)				
	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				1680
			840									840		
18, 181	EF018O1R													480
		480												
18				EF018O2R			EF018O3R			EF018O4R				1570
					455			575			540			
19	EM019O1R			EM019O2R			EM019O3R			EM019O4R			500	610
	110													
19				EF019O2R			EF019O3R			EF019O4R			110	110
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 (2015)	Total Licenses (2015)
	License #s (2015)			License #s (2015)			License #s (2015)			License #s (2015)				
	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				
					350			350			175			875
22				EF022O2R			EF022O3R			EF022O4R				
											100		400	500
25										EM025O4R				
										40				40
25, 26				EF025O2R			EF025O3R			EF025O4R				
													200	200
26										EM026O4R				
										100				100
27	EE027O1R									EE027O4R				
			75									50		125
27	EF027O1R			EF027O2R			EF027O3R			EF027O4R				
		115			260			185			85			645
28, 37	EE028O1R									EE028O4R				
			550									385		935
28, 37	EF028O1R			EF028O2R			EF028O3R			EF028O4R				
		330			330			440			385			1485
29	EM029O1R			EM029O2R			EM029O3R			EM029O4R				
	10												20	30

#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 (2015)	Total Licenses (2015)
	License #s (2015)			License #s (2015)			License #s (2015)			License #s (2015)				
	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		65	75
		10												
31					EF031O2R			EF031O3R			EF031O4R		500	500
32					EF032O2R			EF032O3R			EF032O4R		300	300
33											EM033O4R			115
										115				
33					EF033O2R			EF033O3R			EF033O4R		950	950
34											EM034O4R			35
										35				
34					EF034O2R			EF034O3R			EF034O4R		200	200
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		480	480

#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 (2015)	Total Licenses (2015)
	License #s (2015)			License #s (2015)			License #s (2015)			License #s (2015)				
	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											60	80
39	EM039O1R			EM039O2R			EM039O3R			EM039O4R				
	60			60			50			20				190
39	EF039O1R			EF039O2R			EF039O3R			EF039O4R				
		20											120	140
40	EE040O1R			EE040O2R			EE040O3R			EE040O4R				
			35			33			33			25		126
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													
			225											225
43, 471	EF043O1R													
		35												35

#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 (2015)	Total Licenses (2015)
	License #s (2015)			License #s (2015)			License #s (2015)			License #s (2015)				
	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		75		75
43				EF043O2R			EF043O3R			EF043O4R			450	450
44, 45, 47, 444	EE044O1R		300											300
44, 45, 47, 444	EF044O1R	340												340
44										EE044O4R		190		190
44				EF044O2R			EF044O3R			EF044O4R			250	250
45										EE045O4R		130		130
45				EFO45O2R			EF045O3R			EF045O4R			175	175
46	EM046O1R			EM046O2R			EM046O3R			EM046O4R			80	105
	25													
46	EF046O1R	20		EF046O2R			EF046O3R			EF046O4R			60	80
47										EE047O4R		55		55
47				EF047O2R			EF047O3R			EF047O4R			290	290
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 (2015)	Total Licenses (2015)
	License #s (2015)			License #s (2015)			License #s (2015)			License #s (2015)				
	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 (2015)	Total Licenses (2015)
	License #s (2015)			License #s (2015)			License #s (2015)			License #s (2015)				
	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				
					120			150			50			320
54	EF054O1R			EF054O2R			EF054O3R			EF054O4R				
		170			150			70			110			500
54	EE054O1R						EE054O3R			EE054O4R				
			335						450			200		985
55										EE055O4R				
												45		45
55	EM055O1R													
	280													280
55	EF055O1R			EF055O2R			EF055O3R			EF055O4R				
		325			305			375			130			1135
56	EM056O1R			EM056O2R			EM056O3R			EM056O4R				
	50			50			50			25				175
56				EF056O2R			EF056O3R			EF056O4R				
					50			50			30			130
57, 58	EM057O1R			EM057O2R			EM057O3R			EM057O4R				
	80			80			80			80				320
57, 58	EF057O1R			EF057O2R			EF057O3R			EF057O4R				
		90			110			110			90			400
59, 581	EM059O1R									EM059O4R				
	100									180				280

#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 (2015)	Total Licenses (2015)
	License #s (2015)			License #s (2015)			License #s (2015)			License #s (2015)				
	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			150	200
		50												
60										EE060O4R				50
												50		
60	EM060O1R													45
	45													
60	EF060O1R			EF060O2R			EF060O3R			EF060O4R			20	40
		10			10									
61	EM061O1R			EM061O2R			EM061O3R			EM061O4R			190	330
	140													
61	EF061O1R			EF061O2R			EF061O3R			EF061O4R				785
		60			225			250			250			
62										EE062O4R				100
												100		
62	EM062O1R													285
	285													
62	EF062O1R			EF062O2R			EF062O3R			EF062O4R			250	650
		150			250									
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 (2015)	Total Licenses (2015)
	License #s (2015)			License #s (2015)			License #s (2015)			License #s (2015)				
	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			330	770
		165			275									
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				360
					200			100			60			
70				EF070O2R			EF070O3R			EF070O4R				810
					350			260			200			
70,	EE070O1R									EE070O4R				440
			400									40		
71, 72, 73, 711	EE071O1R									EE071O4R				1050
			860									190		

#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 (2015)	Total Licenses (2015)
	License #s (2015)			License #s (2015)			License #s (2015)			License #s (2015)				
	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		
71				EF071O2R			EF071O3R			EF071O4R			195	195
72				EF072O2R			EF072O3R			EF072O4R			80	80
73				EF073O2R			EF073O3R			EF073O4R			40	40
74, 741	EE074O1R													325
			325											
74, 741										EM074O4R				60
										60				
74				EF074O2R			EF074O3R			EF074O4R			125	125
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				570
					200			180			190			
77, 78, 771	EE077O1R													750
			750											
77, 78, 771										EM077O4R				80
										80				

#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 (2015)	Total Licenses (2015)
	License #s (2015)			License #s (2015)			License #s (2015)			License #s (2015)				
	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				EF077O2R			EF077O3R			EF077O4R				245
					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				900
	850									50				
80				EF080O2R			EF080O3R			EF080O4R				225
					5			5			215			
81				EF081O2R			EF081O3R			EF081O4R				235
					5			5			225			
82	EE082O1R									EE082O4R				375
			300									75		
82	EF082O1R			EF082O2R			EF082O3R			EF082O4R				465
		25			200			200			40			
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 (2015)	Total Licenses (2015)
	License #s (2015)			License #s (2015)			License #s (2015)			License #s (2015)				
	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			375	375
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 (2015)	Total Licenses (2015)
	License #s (2015)			License #s (2015)			License #s (2015)			License #s (2015)				
	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				620
					190			240			190			
191	EM191O1R			EM191O2R			EM191O3R			EM191O4R			300	350
	50													
191				EF191O2R			EF191O3R			EF191O4R			100	100
201	EF201O1R			EF201O2R			EF201O3R			EF201O4R				155
		30			55			30			40			
214										EM214O4R				50
										50				
214				EF214O2R			EF214O3R			EF214O4R			400	400
231										EM231O4R				60
										60				
231				EF231O2R			EF231O3R			EF231O4R			250	250
371	EE371O1R									EE371O4R				265
			155									110		
371	EF371O1R			EF371O2R			EF371O3R			EF371O4R				430
		110			75			130			115			
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

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 (2015)	Total Licenses (2015)
	License #s (2015)			License #s (2015)			License #s (2015)			License #s (2015)				
	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				
													565	565
461	EM461O1R			EM461O2R			EM461O3R			EM461O4R				
													60	60
461	EF461O1R			EF461O2R			EF461O3R			EF461O4R				
													50	50
471										EE471O4R				
												25		25
471				EF471O2R			EF471O3R			EF471O4R				
													45	45
481	EM481O1R			EM481O2R			EM481O3R			EM481O4R				
	70												200	270
481				EF481O2R			EF481O3R			EF481O4R				
													200	200
500	EM500O1R			EM500O2R			EM500O3R			EM500O4R				
	100												150	250
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

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 (2015)	Total Licenses (2015)
	License #s (2015)			License #s (2015)			License #s (2015)			License #s (2015)				
	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				660
		120			240			250			50			

#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 (2015)	Total Licenses (2015)
	License #s (2015)			License #s (2015)			License #s (2015)			License #s (2015)				
	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		
561	EM561O1R			EM561O2R			EM561O3R			EM561O4R				105
	30			30			30			15				
561				EF561O2R			EF561O3R			EF561O4R				80
					30			30			20			
681				EF681O2R			EF681O3R			EF681O4R				335
					160			125			50			
711				EF711O2R			EF711O3R			EF711O4R			170	275
											105			
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							4
						2			2					

#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 (2015)	Total Licenses (2015)
	License #s (2015)			License #s (2015)			License #s (2015)			License #s (2015)				
	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	**13290**	**9090**	**7490**	**1020**	**9000**	**35**	**715**	**7115**	**485**	**4330**	**7125**	**3600**	**25480**	**88775**

#257 - RIFLE AND ASSOCIATED METHODS ELK SEASONS - ANY LAWFUL METHOD OF TAKE PERMITTED DURING THESE SEASONS

C. Private Land Only Elk Seasons

1. Private Land Only Season Dates, Units (as described in Chapter 0 of these regulations), and Limited Licenses.

a. All applicants for "Private Land Only" licenses must obtain permission to hunt from at least one private landowner within the game management unit prior to applying for a license.

b. Private land only licenses are valid on all private land within the game management unit upon which the license holder has permission to hunt.

Unit	Season Dates Concurrent with 1st Season (Separate Limited Elk) 10/10/2015 – 10/14/2015			Season Dates Concurrent with 2nd Season (Combined) 10/17/2015 – 10/25/2015			Season Dates Concurrent with 3rd Season (Combined) 10/31/2015 – 11/08/2015			Season Dates Concurrent with 4th Season (Combined) 11/11/2015 – 11/15/2015			Float Total (2015)	Other Season Dates					Total (2015)
	Licenses (2015)			Licenses (2015)			Licenses (2015)			Licenses (2015)							Licenses (2015)		
	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex		Hunt Code	Date Open-Date Closed	Antlered	Antlerless	Either Sex	
1														EF001P5R	08/15/2015-01/15/2016		10		10
3, 4, 5, 214, 301, 441	EE003P1R													EF003P5R	10/17/2015-11/30/2015		850		1250
			400																
6, 16, 17, 161, 171	EE006P1R																		150
			150																
6, 16, 17, 161, 171				EF006P2R										EF006P5R	08/15/2015-09/30/2015		350		400
					50														
6							EF006P3R			EF006P4R									20
								10			10								
7, 8														EF007P5R	09/01/2015-01/31/2016		200		200
9														EF009P5R	09/01/2015-01/31/2016		145		145

#257 - RIFLE AND ASSOCIATED METHODS ELK SEASONS - ANY LAWFUL METHOD OF TAKE PERMITTED DURING THESE SEASONS

C. Private Land Only Elk Seasons

1. Private Land Only Season Dates, Units (as described in Chapter 0 of these regulations), and Limited Licenses.

a. All applicants for "Private Land Only" licenses must obtain permission to hunt from at least one private landowner within the game management unit prior to applying for a license.

b. Private land only licenses are valid on all private land within the game management unit upon which the license holder has permission to hunt.

Unit	Season Dates Concurrent with 1st Season (Separate Limited Elk) 10/10/2015 – 10/14/2015			Season Dates Concurrent with 2nd Season (Combined) 10/17/2015 – 10/25/2015			Season Dates Concurrent with 3rd Season (Combined) 10/31/2015 – 11/08/2015			Season Dates Concurrent with 4th Season (Combined) 11/11/2015 – 11/15/2015			Float Total (2015)	Other Season Dates					Total (2015)
	Licenses (2015)			Licenses (2015)			Licenses (2015)			Licenses (2015)							Licenses (2015)		
	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex		Hunt Code	Date Open-Date Closed	Antlered	Antlerless	Either Sex	
10														EF010P5R	08/15/2015-01/15/2016		125		125
11, 12, 13, 23, 24, 25, 26, 33, 34, 131, 211, 231	EE011P1R																		
			700																700
11, 12, 13, 23, 24, 211														EF011P5R	10/01/2015-11/30/2015		800		800
14, 214, 441														EF014P5R	12/01/2015-12/31/2015		300		300
15	EE015P1R			EE015P2R			EE015P3R			EE015P4R				EF015P5R	11/16/2015-01/31/2016		300		600
			75			75			75			75							
16							EF016P3R			EF016P4R									
								10			10								20
17							EF017P3R			EF017P4R									
								10			10								20
18	EF018P1R			EF018P2R			EF018P3R			EF018P4R			240						240

#257 - RIFLE AND ASSOCIATED METHODS ELK SEASONS - ANY LAWFUL METHOD OF TAKE PERMITTED DURING THESE SEASONS

C. Private Land Only Elk Seasons

1. Private Land Only Season Dates, Units (as described in Chapter 0 of these regulations), and Limited Licenses.

a. All applicants for "Private Land Only" licenses must obtain permission to hunt from at least one private landowner within the game management unit prior to applying for a license.

b. Private land only licenses are valid on all private land within the game management unit upon which the license holder has permission to hunt.

Unit	Season Dates Concurrent with 1st Season (Separate Limited Elk) 10/10/2015 – 10/14/2015			Season Dates Concurrent with 2nd Season (Combined) 10/17/2015 – 10/25/2015			Season Dates Concurrent with 3rd Season (Combined) 10/31/2015 – 11/08/2015			Season Dates Concurrent with 4th Season (Combined) 11/11/2015 – 11/15/2015			Float Total (2015)	Other Season Dates					Total (2015)
	Licenses (2015)			Licenses (2015)			Licenses (2015)			Licenses (2015)						Licenses (2015)			
	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex		Hunt Code	Date Open-Date Closed	Antlered	Antlerless	Either Sex	
18, 181	EE018P1R									EE018P4R									720
			360									360							
19														EF019P5R	09/01/2015-01/31/2016		150		150
20														EF020P5R	09/01/2015-01/31/2016		500		500
21, 22, 30, 31, 32	EE021P1R																		125
			125																
22, 31, 32														EF022P5R	10/10/2015-12/31/2015		400		400
23, 24														EF023P5R	12/01/2015-12/31/2015		50		50

#257 - RIFLE AND ASSOCIATED METHODS ELK SEASONS - ANY LAWFUL METHOD OF TAKE PERMITTED DURING THESE SEASONS

C. Private Land Only Elk Seasons

1. Private Land Only Season Dates, Units (as described in Chapter 0 of these regulations), and Limited Licenses.

a. All applicants for "Private Land Only" licenses must obtain permission to hunt from at least one private landowner within the game management unit prior to applying for a license.

b. Private land only licenses are valid on all private land within the game management unit upon which the license holder has permission to hunt.

Unit	Season Dates Concurrent with 1st Season (Separate Limited Elk) 10/10/2015 – 10/14/2015			Season Dates Concurrent with 2nd Season (Combined) 10/17/2015 – 10/25/2015			Season Dates Concurrent with 3rd Season (Combined) 10/31/2015 – 11/08/2015			Season Dates Concurrent with 4th Season (Combined) 11/11/2015 – 11/15/2015			Float Total (2015)	Other Season Dates					Total (2015)
	Licenses (2015)			Licenses (2015)			Licenses (2015)			Licenses (2015)							Licenses (2015)		
	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex		Hunt Code	Date Open-Date Closed	Antlered	Antlerless	Either Sex	
25, 26, 231														EF025P5R	08/15/2015-01/15/2016		400		400
27	EF027P1R			EF027P2R			EF027P3R			EF027P4R			25						50
		25																	
27	EE027P1R									EE027P4R									200
			100									100							
28, 37	EF028P1R			EF028P2R			EF028P3R			EF028P4R			440						440
28, 37	EE028P1R									EE028P4R									440
			220									220							
29														EF029P5R	09/01/2015-01/31/2016		80		80

#257 - RIFLE AND ASSOCIATED METHODS ELK SEASONS - ANY LAWFUL METHOD OF TAKE PERMITTED DURING THESE SEASONS

C. Private Land Only Elk Seasons

1. Private Land Only Season Dates, Units (as described in Chapter 0 of these regulations), and Limited Licenses.

a. All applicants for "Private Land Only" licenses must obtain permission to hunt from at least one private landowner within the game management unit prior to applying for a license.

b. Private land only licenses are valid on all private land within the game management unit upon which the license holder has permission to hunt.

Unit	Season Dates Concurrent with 1st Season (Separate Limited Elk) 10/10/2015 – 10/14/2015			Season Dates Concurrent with 2nd Season (Combined) 10/17/2015 – 10/25/2015			Season Dates Concurrent with 3rd Season (Combined) 10/31/2015 – 11/08/2015			Season Dates Concurrent with 4th Season (Combined) 11/11/2015 – 11/15/2015			Float Total (2015)	Other Season Dates					Total (2015)
	Licenses (2015)			Licenses (2015)			Licenses (2015)			Licenses (2015)							Licenses (2015)		
	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex		Hunt Code	Date Open-Date Closed	Antlered	Antlerless	Either Sex	
33										EE033P4R				EF033P5R	12/01/2015-01/31/2016		100		125
												25							
34														EF034P5R	08/15/2015-01/15/2016		50		50
35														EF035P5R	08/15/2015-01/15/2016		100		100
35, 36, 361	EE035P1R																		30
			30																
36, 361														EF036P5R	08/15/2015-01/15/2016		65		65
38	EE038P1R													EF038P5R	09/01/2015-01/31/2016		150		160
			10																
39														EF039P5R	09/01/2015-01/31/2016		50		50

#257 - RIFLE AND ASSOCIATED METHODS ELK SEASONS - ANY LAWFUL METHOD OF TAKE PERMITTED DURING THESE SEASONS

C. Private Land Only Elk Seasons

1. Private Land Only Season Dates, Units (as described in Chapter 0 of these regulations), and Limited Licenses.

a. All applicants for "Private Land Only" licenses must obtain permission to hunt from at least one private landowner within the game management unit prior to applying for a license.

b. Private land only licenses are valid on all private land within the game management unit upon which the license holder has permission to hunt.

Unit	Season Dates Concurrent with 1st Season (Separate Limited Elk) 10/10/2015 – 10/14/2015			Season Dates Concurrent with 2nd Season (Combined) 10/17/2015 – 10/25/2015			Season Dates Concurrent with 3rd Season (Combined) 10/31/2015 – 11/08/2015			Season Dates Concurrent with 4th Season (Combined) 11/11/2015 – 11/15/2015			Float Total (2015)	Other Season Dates					Total (2015)
	Licenses (2015)			Licenses (2015)			Licenses (2015)			Licenses (2015)							Licenses (2015)		
	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex		Hunt Code	Date Open-Date Closed	Antlered	Antlerless	Either Sex	
40														EF040P5R	09/01/2015-11/30/2015		375		375
41, 42, 52, 411, 421, 521	EE041P1R									EE041P4R									
			330									145							475
41														EF041P5R	09/01/2015-01/31/2016		275		275
43														EF043P5R	08/15/2015-01/15/2016		150		150
43, 471	EE043P1R																		
			10																10
44														EF044P5R	08/15/2015-01/15/2016		125		125
44, 45, 47, 444	EE044P1R																		
			75																75
45														EF045P5R	08/15/2015-01/15/2016		50		50
46														EF046P5R	09/01/2015-01/31/2016		40		40

#257 - RIFLE AND ASSOCIATED METHODS ELK SEASONS - ANY LAWFUL METHOD OF TAKE PERMITTED DURING THESE SEASONS

C. Private Land Only Elk Seasons

1. Private Land Only Season Dates, Units (as described in Chapter 0 of these regulations), and Limited Licenses.

a. All applicants for "Private Land Only" licenses must obtain permission to hunt from at least one private landowner within the game management unit prior to applying for a license.

b. Private land only licenses are valid on all private land within the game management unit upon which the license holder has permission to hunt.

Unit	Season Dates Concurrent with 1st Season (Separate Limited Elk) 10/10/2015 – 10/14/2015			Season Dates Concurrent with 2nd Season (Combined) 10/17/2015 – 10/25/2015			Season Dates Concurrent with 3rd Season (Combined) 10/31/2015 – 11/08/2015			Season Dates Concurrent with 4th Season (Combined) 11/11/2015 – 11/15/2015			Float Total (2015)	Other Season Dates					Total (2015)
	Licenses (2015)			Licenses (2015)			Licenses (2015)			Licenses (2015)							Licenses (2015)		
	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex		Hunt Code	Date Open-Date Closed	Antlered	Antlerless	Either Sex	
47														EF047P5R	08/15/2015-01/15/2016		75		75
50														EF050P5R	09/01/2015-01/31/2016		30		30
51														EF051P5R	09/01/2015-01/31/2016		175		175
52														EF052P5R	12/01/2015-01/31/2016		175		175
53, 63	EE053P1R									EE053P4R									150
			85									65							

#257 - RIFLE AND ASSOCIATED METHODS ELK SEASONS - ANY LAWFUL METHOD OF TAKE PERMITTED DURING THESE SEASONS

C. Private Land Only Elk Seasons

1. Private Land Only Season Dates, Units (as described in Chapter 0 of these regulations), and Limited Licenses.

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Unit	Season Dates Concurrent with 1st Season (Separate Limited Elk) 10/10/2015 – 10/14/2015			Season Dates Concurrent with 2nd Season (Combined) 10/17/2015 – 10/25/2015			Season Dates Concurrent with 3rd Season (Combined) 10/31/2015 – 11/08/2015			Season Dates Concurrent with 4th Season (Combined) 11/11/2015 – 11/15/2015			Float Total (2015)	Other Season Dates					Total (2015)
	Licenses (2015)			Licenses (2015)			Licenses (2015)			Licenses (2015)						Licenses (2015)			
	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex		Hunt Code	Date Open-Date Closed	Antlered	Antlerless	Either Sex	
53, 63 -Delta County only, 521 - South of Colo 133 and west of Somerset														EF053P5R	12/01/2015-01/31/2016		125		125
54	EE054P1R									EE054P4R									
			25									65							90
54														EF054P5R	08/15/2015-01/31/2016		50		50
55, 551	EE055P1R									EE055P4R									
			25									25							50
56														EF056P5R	09/01/2015-01/31/2016		70		70
57, 58														EF057P5R	09/01/2015-01/31/2016		250		250
59, 581	EE059P1R																		
			80																80
59, 581														EF059P5R			200		200

#257 - RIFLE AND ASSOCIATED METHODS ELK SEASONS - ANY LAWFUL METHOD OF TAKE PERMITTED DURING THESE SEASONS

C. Private Land Only Elk Seasons

1. Private Land Only Season Dates, Units (as described in Chapter 0 of these regulations), and Limited Licenses.

a. All applicants for "Private Land Only" licenses must obtain permission to hunt from at least one private landowner within the game management unit prior to applying for a license.

b. Private land only licenses are valid on all private land within the game management unit upon which the license holder has permission to hunt.

Unit	Season Dates Concurrent with 1st Season (Separate Limited Elk) 10/10/2015 – 10/14/2015			Season Dates Concurrent with 2nd Season (Combined) 10/17/2015 – 10/25/2015			Season Dates Concurrent with 3rd Season (Combined) 10/31/2015 – 11/08/2015			Season Dates Concurrent with 4th Season (Combined) 11/11/2015 – 11/15/2015			Float Total (2015)	Other Season Dates					Total (2015)
	Licenses (2015)			Licenses (2015)			Licenses (2015)			Licenses (2015)							Licenses (2015)		
	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex		Hunt Code	Date Open-Date Closed	Antlered	Antlerless	Either Sex	
															09/01/2015-01/31/2016				
60	EE060P1R									EE060P4R				EF060P5R	09/01/2015-12/31/2015		50		70
			10									10							
61														EF061P5R	12/15/2015-01/15/2016		125		125
62	EE062P1R									EE062P4R									150
			75									75							
62				EF062P2R			EF062P3R			EF062P4R				EF062P5R	12/01/2015-12/31/2015		60		300
													240						
63 - West of Hwy 92														EF063P5R	08/15/2015-11/15/2015		225		225
64, 65	EE064P1R									EE064P4R									215
			130									85							
64				EF064P2R			EF064P3R			EF064P4R			50						50
65														EF065P5R	10/10/2015-11/30/2015		425		425

#257 - RIFLE AND ASSOCIATED METHODS ELK SEASONS - ANY LAWFUL METHOD OF TAKE PERMITTED DURING THESE SEASONS

C. Private Land Only Elk Seasons

1. Private Land Only Season Dates, Units (as described in Chapter 0 of these regulations), and Limited Licenses.

a. All applicants for "Private Land Only" licenses must obtain permission to hunt from at least one private landowner within the game management unit prior to applying for a license.

b. Private land only licenses are valid on all private land within the game management unit upon which the license holder has permission to hunt.

Unit	Season Dates Concurrent with 1st Season (Separate Limited Elk) 10/10/2015 – 10/14/2015			Season Dates Concurrent with 2nd Season (Combined) 10/17/2015 – 10/25/2015			Season Dates Concurrent with 3rd Season (Combined) 10/31/2015 – 11/08/2015			Season Dates Concurrent with 4th Season (Combined) 11/11/2015 – 11/15/2015			Float Total (2015)	Other Season Dates					Total (2015)
	Licenses (2015)			Licenses (2015)			Licenses (2015)			Licenses (2015)						Licenses (2015)			
	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex		Hunt Code	Date Open-Date Closed	Antlered	Antlerless	Either Sex	
68														EF068P5R	09/01/2015-12/31/2015		15		15
69, 84														EF069P5R	09/01/2015-01/31/2016		425		425
70	EE070P1R		220							EE070P4R		60							280
70				EF070P2R			EF070P3R			EF070P4R			500	EF070P5R	12/01/2015-12/31/2015		200		700
71, 72, 73, 711	EE071P1R		120							EE071P4R		30							150
72, 711														EF072P5R	09/01/2015-09/30/2015		100		100
73 - South of Colo 184 and US 160														EF073P5R	09/01/2015-10/09/2015		75		75
74, 741	EE074P1R		15							EE074P4R		20							35

#257 - RIFLE AND ASSOCIATED METHODS ELK SEASONS - ANY LAWFUL METHOD OF TAKE PERMITTED DURING THESE SEASONS

C. Private Land Only Elk Seasons

1. Private Land Only Season Dates, Units (as described in Chapter 0 of these regulations), and Limited Licenses.

a. All applicants for "Private Land Only" licenses must obtain permission to hunt from at least one private landowner within the game management unit prior to applying for a license.

b. Private land only licenses are valid on all private land within the game management unit upon which the license holder has permission to hunt.

Unit	Season Dates Concurrent with 1st Season (Separate Limited Elk) 10/10/2015 – 10/14/2015			Season Dates Concurrent with 2nd Season (Combined) 10/17/2015 – 10/25/2015			Season Dates Concurrent with 3rd Season (Combined) 10/31/2015 – 11/08/2015			Season Dates Concurrent with 4th Season (Combined) 11/11/2015 – 11/15/2015			Float Total (2015)	Other Season Dates					Total (2015)
	Licenses (2015)			Licenses (2015)			Licenses (2015)			Licenses (2015)						Licenses (2015)			
	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex		Hunt Code	Date Open-Date Closed	Antlered	Antlerless	Either Sex	
74 - all private lands in La Plata County, and 75 - all private lands west of Florida River and north of US 160, and all private lands south of US 160														EF074P5R	09/01/2015 -01/15/2016		350		350
75, 751,										EE075P4R		25							25
77, 78, 771	EE077P1R		50							EE077P4R		25		EF077P5R	09/01/2015-09/30/2015		40		115

#257 - RIFLE AND ASSOCIATED METHODS ELK SEASONS - ANY LAWFUL METHOD OF TAKE PERMITTED DURING THESE SEASONS

C. Private Land Only Elk Seasons

1. Private Land Only Season Dates, Units (as described in Chapter 0 of these regulations), and Limited Licenses.

a. All applicants for "Private Land Only" licenses must obtain permission to hunt from at least one private landowner within the game management unit prior to applying for a license.

b. Private land only licenses are valid on all private land within the game management unit upon which the license holder has permission to hunt.

Unit	Season Dates Concurrent with 1st Season (Separate Limited Elk) 10/10/2015 – 10/14/2015			Season Dates Concurrent with 2nd Season (Combined) 10/17/2015 – 10/25/2015			Season Dates Concurrent with 3rd Season (Combined) 10/31/2015 – 11/08/2015			Season Dates Concurrent with 4th Season (Combined) 11/11/2015 – 11/15/2015			Float Total (2015)	Other Season Dates					Total (2015)
	Licenses (2015)			Licenses (2015)			Licenses (2015)			Licenses (2015)							Licenses (2015)		
	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex		Hunt Code	Date Open-Date Closed	Antlered	Antlerless	Either Sex	
79														EF079P5R	09/01/2015-01/31/2016		20		20
80														EF080P5R	09/01/2015-01/31/2016		30		30
81														EF081P5R	09/01/2015-01/31/2016		35		35
82	EE082P1R		15											EE082P5R-see #257.5 - special restrictions	09/01/2015-11/30/2015			40	55
83	EE083P1R		75							EE083P4R		75							150
83				EF083P2R	50		EF083P3R	75		EF083P4R	15								140
85, 140, 851	EE085P1R		300																300
85, 140, 851														EF085P5R	10/10/2015-11/30/2015		300		300
85, 140, 851														EF085P6R	12/01/2015-12/31/2015		375		375
86, 691, 861														EF086P5R			600		600

#257 - RIFLE AND ASSOCIATED METHODS ELK SEASONS - ANY LAWFUL METHOD OF TAKE PERMITTED DURING THESE SEASONS

C. Private Land Only Elk Seasons

1. Private Land Only Season Dates, Units (as described in Chapter 0 of these regulations), and Limited Licenses.

a. All applicants for "Private Land Only" licenses must obtain permission to hunt from at least one private landowner within the game management unit prior to applying for a license.

b. Private land only licenses are valid on all private land within the game management unit upon which the license holder has permission to hunt.

Unit	Season Dates Concurrent with 1st Season (Separate Limited Elk) 10/10/2015 – 10/14/2015			Season Dates Concurrent with 2nd Season (Combined) 10/17/2015 – 10/25/2015			Season Dates Concurrent with 3rd Season (Combined) 10/31/2015 – 11/08/2015			Season Dates Concurrent with 4th Season (Combined) 11/11/2015 – 11/15/2015			Float Total (2015)	Other Season Dates					Total (2015)
	Licenses (2015)			Licenses (2015)			Licenses (2015)			Licenses (2015)							Licenses (2015)		
	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex		Hunt Code	Date Open-Date Closed	Antlered	Antlerless	Either Sex	
															09/01/2015-01/31/2016				
86, 691, 861	EE086P1R																		
			55																55
104, 105, 106,														EF104P5R	09/01/2015-01/31/2016		300		300
131				EF131P2R			EF131P3R			EF131P4R			200	EF131P5R	11/16/2015-01/31/2016		200		400
161							EF161P3R			EF161P4R									
								10			10								20
171							EF171P3R			EF171P4R									
								10			10								20
181	EF181P1R			EF181P2R			EF181P3R			EF181P4R			240						240
191														EF191P5R	09/01/2015-01/31/2016		150		150
231				EE231P2R			EE231P3R			EE231P4R			75						75
371	EF371P1R			EF371P2R			EF371P3R			EF371P4R			165						165

#257 - RIFLE AND ASSOCIATED METHODS ELK SEASONS - ANY LAWFUL METHOD OF TAKE PERMITTED DURING THESE SEASONS

C. Private Land Only Elk Seasons

1. Private Land Only Season Dates, Units (as described in Chapter 0 of these regulations), and Limited Licenses.

a. All applicants for "Private Land Only" licenses must obtain permission to hunt from at least one private landowner within the game management unit prior to applying for a license.

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	Licenses (2015)			Licenses (2015)			Licenses (2015)			Licenses (2015)						Licenses (2015)			
	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex		Hunt Code	Date Open-Date Closed	Antlered	Antlerless	Either Sex	
371	EE371P1R									EE371P4R									
			110									110							220
39- all portions within Jefferson County, 391.														EF391P5R	09/01/2015-01/31/2016		275		275
411														EF411P5R	12/01/2015-01/31/2016		140		140
421														EF421P5R	09/01/2015-01/03/2016		400		400
444														EF444P5R	08/15/2015-01/15/2016		300		300

#257 - RIFLE AND ASSOCIATED METHODS ELK SEASONS - ANY LAWFUL METHOD OF TAKE PERMITTED DURING THESE SEASONS

C. Private Land Only Elk Seasons

1. Private Land Only Season Dates, Units (as described in Chapter 0 of these regulations), and Limited Licenses.

a. All applicants for "Private Land Only" licenses must obtain permission to hunt from at least one private landowner within the game management unit prior to applying for a license.

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Unit	Season Dates Concurrent with 1st Season (Separate Limited Elk) 10/10/2015 – 10/14/2015			Season Dates Concurrent with 2nd Season (Combined) 10/17/2015 – 10/25/2015			Season Dates Concurrent with 3rd Season (Combined) 10/31/2015 – 11/08/2015			Season Dates Concurrent with 4th Season (Combined) 11/11/2015 – 11/15/2015			Float Total (2015)	Other Season Dates					Total (2015)
	Licenses (2015)			Licenses (2015)			Licenses (2015)			Licenses (2015)							Licenses (2015)		
	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex		Hunt Code	Date Open-Date Closed	Antlered	Antlerless	Either Sex	
461														EF461P5R	09/01/2015-01/31/2016		50		50
471														EF471P5R	08/15/2015-01/15/2016		10		10
481														EF481P5R	09/01/2015-01/31/2016		90		90
500														EF500P5R	09/01/2015--01/31/2016		20		20
501														EF501P5R	09/01/2015-01/31/2016		30		30
511	EE511P1R																		10
			10																
511														EF511P5R	09/01/2015-01/31/2016		200		200
682, 791 – see #257.5 - special restriction														EF682P5R	08/15/2015-12/31/2015		150		150

#257 - RIFLE AND ASSOCIATED METHODS ELK SEASONS - ANY LAWFUL METHOD OF TAKE PERMITTED DURING THESE SEASONS

C. Private Land Only Elk Seasons

1. Private Land Only Season Dates, Units (as described in Chapter 0 of these regulations), and Limited Licenses.

a. All applicants for "Private Land Only" licenses must obtain permission to hunt from at least one private landowner within the game management unit prior to applying for a license.

b. Private land only licenses are valid on all private land within the game management unit upon which the license holder has permission to hunt.

Unit	Season Dates Concurrent with 1st Season (Separate Limited Elk) 10/10/2015 – 10/14/2015			Season Dates Concurrent with 2nd Season (Combined) 10/17/2015 – 10/25/2015			Season Dates Concurrent with 3rd Season (Combined) 10/31/2015 – 11/08/2015			Season Dates Concurrent with 4th Season (Combined) 11/11/2015 – 11/15/2015			Float Total (2015)	Other Season Dates					Total (2015)
	Licenses (2015)			Licenses (2015)			Licenses (2015)			Licenses (2015)						Licenses (2015)		
	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex	Antlered	Antler-less	Either Sex		Hunt Code	Date Open-Date Closed	Antlered	Antlerless	Either Sex	
682, 791 - see #257.5 - special restrictions														EM682P6R	08/15/2015-12/31/2015	100			100
711														EF711P5R	10/15/2015-11/16/2015		25		25
741														EF741P5R	09/01/2015-01/15/2016		350		350
751 south of US 160														EF751P5R	12/01/2015-01/15/2016		100		100
TOTALS	**0**	**25**	**3985**	**0**	**100**	**75**	**0**	**125**	**75**	**0**	**65**	**1595**	**2175**			**100**	**13580**	**40**	**21940**

#257 - RIFLE AND ASSOCIATED METHODS ELK SEASONS - ANY LAWFUL METHOD OF TAKE PERMITTED DURING THESE SEASONS D. San Luis Valley Game Damage Private Land Only Antlered Elk Seasons				
Units	**Hunt Code**	**Date Open-Date Closed**	**Licenses (2015)**	**Total (2015)**
682, 791 - see #257.5 - special restrictions	EM682P5R	05/15/2015-07/31/2015	100	**100**

E. Late Elk Seasons

1. Late Season Hunt, Dates, Units (as described in Chapter 0 of these regulations), Limited Licenses.

Unit	Hunt Code	Date Open	Date Closed	Licenses (2015)	
				Antlered	Antlerless
1	EF001L1R	12/01/2015	12/31/2015		10
2, 201	EF002L1R	12/01/2015	12/31/2015		25
3, 301	EF003L1R	12/01/2015	12/31/2015		300
7, 8	EF007L1R	12/05/2015	12/16/2015		40
9	EF009L1R	10/15/2015	11/30/2015		60
10	EF010L1R	12/01/2015	12/31/2015		175
11	EF011L1R	12/01/2015	12/31/2015		100
13	EF013L1R	12/01/2015	12/31/2015		100
18	EF018L1R	11/21/2015	11/29/2015		90
19	EF019L1R	12/05/2015	12/16/2015		40
20	EM020L1R	11/21/2015	12/02/2015	60	
20	EF020L1R	11/21/2015	12/02/2015		30
20	EM020L2R	01/09/2016	01/20/2016	60	
20	EF020L2R	01/09/2016	01/20/2016		10
20 - Those portions bounded on the north by the Little Thompson River; on the east by US 287, on the south by Colo 66 (Ute Hwy); and on the west by N 53rd St, Vestal Rd, N 55th St. Dakota Ridge Rd, Redstone Dr, and Thunder Rd.	EF020L3R	08/15/2015	01/31/2016		100
22	EF022L1R	12/01/2015	12/31/2015		100
26	EF026L1R	12/01/2015	01/15/2016		60
27	EF027L1R	11/21/2015	11/29/2015		80
28, 37	EF028L1R	11/21/2015	11/29/2015		220
31	EF031L1R	12/01/2015	12/31/2015		300
35, 36	EF035L1R	11/21/2015 12/15/2015	11/29/2015 01/15/2016		150
38 Jefferson County ONLY	EF038L1R	12/01/2015	01/31/2016		75
50	EF050L1R	12/26/2015	01/03/2016		75
54 –Those portions of Unit 54, east of Antelope Creek, West Antelope Creek and the east boundary of the West Elk Wilderness, south of Kebler Pass Road (Co Rd 12) and west of Colo Hwy 135	EF054L1R	12/01/2015	12/31/2015		75
61	EF061L1R	12/05/2015	12/13/2015		50
64	EF064L1R	12/01/2015	12/31/2015		25
68	EF068L1R	12/01/2015	12/31/2015		100
79	EF079L1R	12/01/2015	12/31/2015		5
80	EF080L1R	12/01/2015	12/31/2015		5
81	EF081L1R	12/01/2015	12/31/2015		5

1. Late Season Hunt, Dates, Units (as described in Chapter 0 of these regulations), Limited Licenses.

Unit	Hunt Code	Date Open	Date Closed	Licenses (2015)	
				Antlered	Antlerless
85, 140, 851, except the Bosque del Oso State Wildlife Area	EF085L1R	01/01/2016	01/31/2016		175
128	EF128L1R	09/01/2015	01/31/2016		500
133, 134, 141	EF133L1R	10/10/2015	01/31/2016		45
142	EF142L1R	10/10/2015	01/31/2016		25
181	EF181L1R	11/21/2015	11/29/2015		60
191	EF191L1R	12/05/2015	12/16/2015		40
211	EF211L1R	12/01/2015	12/31/2015		50
361	EF361L1R	11/21/2015	11/29/2015		50
371	EF371L1R	11/21/2015	11/29/2015		110
421 That portion north of the South Side Canal, west of Mesa County roads 64.6 (Vega Grade), 330E and 64.3 (Brush Creek Road) and south of the Grand Mesa National Forest boundary.	EF421L1R	12/01/2015	01/03/2016		10
500	EF500L1R	12/26/2015	01/03/2016		60
501	EF501L1R	12/26/2015	01/03/2016		30
512 See special restrictions	EF512L1R	10/01/2015	01/31/2016		30
591	EF591L1R	10/01/2015	01/31/2016		25
681	EF681L1R	12/01/2015	12/31/2015		50
851 - Bosque del Oso SWA ONLY	EF851L1R	11/21/2015	11/29/2015		20
851 - Bosque del Oso SWA ONLY	EF851L2R	12/05/2015	12/13/2015		20
851 - Bosque del Oso SWA ONLY	EF851L3R	12/19/2015	12/27/2015		25
TOTALS				**120**	**3730**

#257.5 - SPECIAL RESTRICTIONS

A. Unit 512 - Air Force Academy

Hunters must apply in person, no later than May 31 annually to participate in a random drawing to be placed on a priority list of hunters. Applications along with a non-refundable application fee not to exceed $10.00 will be accepted at the Academy's Outdoor Recreation Center, Building 5136 - Community Center Drive, AFA, Colorado Springs.

The first 15 hunters drawn will be placed on the list and will be notified of their placement by June 15 annually. When elk are available to be hunted, up to 4 hunters will be called. After obtaining a license, paying a fee not to exceed $30.00 to the Academy and receiving a safety briefing, hunters will be escorted on the hunt. Hunters may decline one opportunity to hunt and hold their place on the list. Hunts will continue when possible until (30) antlerless elk have been taken.

B. Units 82, 682 and 791 – San Luis Valley Damage Elk Hunts

1. The purpose of these hunts is to provide flexibility in managing damage by elk and maintain landowners' rights to determine who may enter their property. Most license vouchers may be issued to friends and family of the landowner. Opportunities for non-associated public hunters may exist and will be selected from a list of interested hunters.

2. License vouchers may be transferred one time only, and shall only be transferred by the landowner to the hunter that will use the voucher to purchase the license. Third-party brokering of landowner vouchers is not permitted. Violation of this subsection shall invalidate the applicable landowner voucher and any license purchased with it.

3. Public hunters must apply no later than July 15 annually, to participate in a random drawing to be placed on a priority list of hunters. Applications will be accepted at the Monte Vista Service Center at 0722 S Rd. 1 E, Monte Vista.

4. Hunters drawn will be placed on the list and the top 10 hunters on the list will be notified of their placement no later than August 15 annually. When elk are available to be hunted, up to 4 hunters will be called. Hunters may decline one opportunity to hunt and hold their place on the list. Hunts will be conducted on an as-needed basis to alleviate game damage.

ARTICLE X - PRONGHORN

#261 - ARCHERY PRONGHORN SEASONS ONLY LAWFUL HAND HELD BOWS MAY BE USED TO HUNT OR TAKE PRONGHORN DURING THE FOLLOWING SEASONS:

A. Regular Archery Pronghorn Seasons

1. Archery Season Dates, Units (as described in Chapter 0 of these regulations), Limited licenses.

Unit	Hunt Code	Date Open	Date Closed	License Types and Numbers (2015)		
				Unlimited Buck or Either Sex	Limited Buck Only	Limited Doe Only
1, 7, 8, 9, 14, 15, 19, 20, 22, 23, 24, 25, 26, 29, 31, 32, 33, 34, 35, 36, 38, 39, 40, 42, 43, 44, 45, 46, 47, 48, 51, 52, 53, 54, 55, 56, 59, 60, 61, 63, 64, 65, 69, 71, 72, 73, 74, 75, 76, 77, 78, 84, 85, 86, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 104, 105, 106, 107, 109, 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, 144, 145, 146, 147 , 191, 231, 361, 371, 421, 444, 461, 471, 481, 511, 521, 561, 591, 691, 711, 741, 751, 771, 851 except Bosque del Oso SWA, 861, 951	AE000U1A	08/15/2015and 09/01/2015	08/31/2015 and 09/20/2015	Unlimited Buck and Either Sex		
3, 301	AM003O1A	08/15/2015	09/20/2015		110	
3, 301	AF003O1A	09/01/2015	09/20/2015			25
4, 5	AM004O1A	08/15/2015	09/20/2015		40	

1. Archery Season Dates, Units (as described in Chapter 0 of these regulations), Limited licenses.

Unit	Hunt Code	Date Open	Date Closed	License Types and Numbers (2015)		
				Unlimited Buck or Either Sex	Limited Buck Only	Limited Doe Only
4, 5	AF004O1A	09/01/2015	09/20/2015			10
6, 16, 17, 161, 171	AM006O1A	08/15/2015	09/20/2015		70	
6, 16, 17, 161, 171	AF006O1A	09/01/2015	09/20/2015			20
11	AM011O1A	08/15/2015	09/20/2015		15	
11	AF011O1A	09/01/2015	09/20/2015			10
12, 211	AM012O1A	08/15/2015	09/20/2015		5	
12, 211	AF012O1A	09/01/2015	09/20/2015			5
13	AM013O1A	08/15/2015	09/20/2015		35	
13	AF013O1A	09/01/2015	09/20/2015			10
18, 27, 28, 37, 181	AM018O1A	08/15/2015	09/20/2015		20	
18, 27, 28, 37, 181	AF018O1A	09/01/2015	09/20/2015			10
49, 50, 500, 501	AM049O1A	08/15/2015	09/20/2015		30	
49, 50, 500, 501	AF049O1A	09/01/2015	09/20/2015			10
57, 58, 581	AM057O1A	08/15/2015	09/20/2015		25	
57, 58, 581	AF057O1A	09/01/2015	09/20/2015			10
66	AM066O1A	08/15/2015	09/20/2015		1	
67	AM067O1A	08/15/2015	09/20/2015		10	
68, 681 - West of Co Rd 46AA and west of the divide between the Saguache Creek drainage and Kerber Creek drainage, 682	AM068O1A	08/15/2015	09/20/2015		5	
79, 791	AM079O1A	08/15/2015	09/20/2015		5	
80	AM080O1A	08/15/2015	09/20/2015		5	
81	AM081O1A	08/15/2015	09/20/2015		6	
82, 681 - East of Co Rd 46AA and east of the divide between the Saguache Creek drainage and Kerber Creek drainage	AM082O1A	08/15/2015	09/20/2015		20	
82, 681 - East of Co Rd 46AA and east of the divide between the Saguache Creek drainage and Kerber Creek drainage	AF082O1A	09/01/2015	09/20/2015			10
87	AM087O1A	08/15/2015	09/20/2015		55	
87	AF087O1A	09/01/2015	09/20/2015			20
88	AM088O1A	08/15/2015	09/20/2015		45	
88	AF088O1A	09/01/2015	09/20/2015			20
131	AM131O1A	08/15/2015	09/20/2015		5	
131	AF131O1A	09/01/2015	09/20/2015			5

1. Archery Season Dates, Units (as described in Chapter 0 of these regulations), Limited licenses.

Unit	Hunt Code	Date Open	Date Closed	License Types and Numbers (2015)		
				Unlimited Buck or Either Sex	Limited Buck Only	Limited Doe Only
201, 2	AM201O1A	08/15/2015	09/20/2015		5	
201	AF201O1A	09/01/2015	09/20/2015			5
214, 441	AM214O1A	08/15/2015	09/20/2015		10	
214, 441	AF214O1A	09/01/2015	09/20/2015			10
551	AM551O1A	08/15/2015	09/20/2015		2	
			TOTALS		**524**	**180**

B. Private Land Only Pronghorn Season

1. Archery - Pronghorn, Dates, Units (as described in Chapter 0 of these regulations), Limited Licenses.

Unit	Hunt Code	Date Open	Date Closed	License Types and Numbers (2015)		
				Buck	Doe	Either Sex
83	AM083P1A	08/15/2015	09/20/2015	5		
			TOTALS	**5**		

#261.5 - MUZZLE-LOADING FIREARMS (RIFLE AND SMOOTHBORE MUSKET) PRONGHORN SEASON - ONLY LAWFUL MUZZLE-LOADING FIREARMS MAY BE USED DURING THIS FOLLOWING SEASON:

A. Regular Seasons

1. Muzzle-loading, Pronghorn, Dates, Units (as described in Chapter 0 of these regulations), and Licenses.

Unit(s)	Hunt Code	Date Open	Date Closed	Licenses Types and Numbers (2015)	
				Buck	Doe
1, 2, 201	AM001O1M	09/21/2015	09/29/2015	5	
1, 201	AF001O1M	09/21/2015	09/29/2015		5
3, 4, 5, 13, 131, 214, 301, 441	AM003O1M	09/21/2015	09/29/2015	15	
3, 4, 5, 13, 131, 214, 301, 441	AF003O1M	09/21/2015	09/29/2015		10
6, 16, 17, 161, 171	AM006O1M	09/21/2015	09/29/2015	20	
6, 16, 17, 161, 171	AF006O1M	09/21/2015	09/29/2015		10
7, 8	AM007O1M	09/21/2015	09/29/2015	10	
7, 8	AF007O1M	09/21/2015	09/29/2015		5
9, 191	AM009O1M	09/21/2015	09/29/2015	10	
9, 191	AF009O1M	09/21/2015	09/29/2015		5
11	AM011O1M	09/21/2015	09/29/2015	10	
11	AF011O1M	09/21/2015	09/29/2015		10
12, 211	AM012O1M	09/21/2015	09/29/2015	5	
12, 211	AF012O1M	09/21/2015	09/29/2015		5

Unit(s)	Hunt Code	Date Open	Date Closed	Licenses Types and Numbers (2015)	
				Buck	Doe
18, 27, 28, 37, 181	AM018O1M	09/21/2015	09/29/2015	25	
18, 27, 28, 37, 181	AF018O1M	09/21/2015	09/29/2015		20
48, 56, 481	AM048O1M	09/21/2015	09/29/2015	10	
48, 56, 481	AF048O1M	09/21/2015	09/29/2015		5
50, 57, 58, 501, 581	AM050O1M	09/21/2015	09/29/2015	10	
50, 57, 58, 501, 581	AF050O1M	09/21/2015	09/29/2015		5
59, 591	AM059O1M	09/21/2015	09/29/2015	5	
59, 591	AF059O1M	09/21/2015	09/29/2015		5
66	AM066O1M	09/21/2015	09/29/2015	1	
67	AM067O1M	09/21/2015	09/29/2015	5	
68, 79, 80, 81, 82, 83, 681, 682, 791	AM068O1M	09/21/2015	09/29/2015	10	
69, 84, 85, 86, 691, 861	AM069O1M	09/21/2015	09/29/2015	70	
69, 84, 85, 86, 691, 861	AF069O1M	09/21/2015	09/29/2015		80
87, 88, 89, 90, 95, 951	AM087O1M	09/21/2015	09/29/2015	30	
87, 88, 89, 90, 95, 951	AF087O1M	09/21/2015	09/29/2015		30
93, 97, 98, 101, 102	AM093O1M	09/21/2015	09/29/2015	10	
99, 100	AM099O1M	09/21/2015	09/29/2015	10	
99, 100	AF099O1M	09/21/2015	09/29/2015		10
104, 105	AM104O1M	09/21/2015	09/29/2015	40	
104, 105	AF104O1M	09/21/2015	09/29/2015		60
106, 107, 109	AM106O1M	09/21/2015	09/29/2015	30	
106, 107, 109	AF106O1M	09/21/2015	09/29/2015		30
110, 111, 118, 119, 123, 124	AM110O1M	09/21/2015	09/29/2015	100	
110, 111, 118, 119, 123, 124	AF110O1M	09/21/2015	09/29/2015		100
112, 113, 114, 115	AM112O1M	09/21/2015	09/29/2015	60	
112, 113, 114, 115	AF112O1M	09/21/2015	09/29/2015		40
116, 117, 122, 127	AM116O1M	09/21/2015	09/29/2015	50	
116, 117, 122, 127	AF116O1M	09/21/2015	09/29/2015		50
120, 121, 125, 126	AM120O1M	09/21/2015	09/29/2015	50	
120, 121, 125, 126	AF120O1M	09/21/2015	09/29/2015		50
128, 129, 133, 134, 135, 140, 141, 142, 147	AM128O1M	09/21/2015	09/29/2015	70	
128, 129, 133, 134, 135, 140, 141, 142, 147	AF128O1M	09/21/2015	09/29/2015		40
130, 136, 137, 138, 143, 144, 146	AM130O1M	09/21/2015	09/29/2015	50	
130, 136, 137, 138, 143, 144, 146	AF130O1M	09/21/2015	09/29/2015		50
132, 139, 145	AM132O1M	09/21/2015	09/29/2015	20	
132, 139, 145	AF132O1M	09/21/2015	09/29/2015		20
551	AM551O1M	09/21/2015	09/29/2015	2	
			TOTALS	**733**	**645**

#262 - RIFLE AND ASSOCIATED METHODS PRONGHORN SEASONS

A. Regular Rifle Pronghorn Seasons

1. Regular Rifle Season Dates, Units (as described in Chapter 0 of these regulations), Licenses.

Unit(s)	Hunt Code	Date Open	Date Closed	License Type and #'s (2015)	
				Buck	Doe
3, 301	AM003O1R	10/03/2015	10/09/2015	255	
3, 301	AF003O1R	10/03/2015	10/09/2015		70
4, 5	AM004O1R	10/03/2015	10/09/2015	80	
4, 5	AF004O1R	10/03/2015	10/09/2015		55
6	AM006O1R	10/03/2015	10/09/2015	15	
6	AF006O1R	10/03/2015	10/09/2015		10
7	AM007O1R	10/03/2015	10/09/2015	10	
7	AF007O1R	10/03/2015	10/09/2015		5
8	AM008O1R	10/03/2015	10/09/2015	10	
8	AF008O1R	10/03/2015	10/09/2015		5
11	AM011O1R	10/03/2015	10/09/2015	60	
11	AF011O1R	10/10/2015	10/09/2015		80
12, 211	AM012O1R	10/03/2015	10/09/2015	15	
12, 211	AF012O1R	10/03/2015	10/09/2015		10
13	AM013O1R	10/03/2015	10/09/2015	30	
13	AF013O1R	10/03/2015	10/09/2015		25
16, 17, 171	AM016O1R	10/03/2015	10/09/2015	35	
16, 17, 171	AF016O1R	10/03/2015	10/09/2015		10
18, 27, 28, 37, 181	AM018O1R	10/03/2015	10/09/2015	75	
18, 27, 28, 37, 181	AF018O1R	10/03/2015	10/09/2015		80
50, 501	AM050O1R	10/03/2015	10/09/2015	20	
50, 501	AF050O1R	10/03/2015	10/09/2015		5
56, 481	AM056O1R	10/03/2015	10/09/2015	10	
56, 481	AF056O1R	10/03/2015	10/09/2015		5
57, 58, 581	AM057O1R	10/03/2015	10/09/2015	30	
57, 58, 581	AF057O1R	10/03/2015	10/09/2015		10
59, 591	AM059O1R	10/03/2015	10/09/2015	10	
59, 591	AF059O1R	10/03/2015	10/09/2015		5
66	AM066O1R	10/03/2015	10/09/2015	2	
67	AM067O1R	10/03/2015	10/09/2015	20	
68, 681 - West of Co Rd 46AA and west of the divide between the Saguache Creek drainage and Kerber Creek drainage, 682	AM068O1R	10/03/2015	10/09/2015	10	
69, 84, 85, 86, 691, 861	AM069O1R	10/03/2015	10/09/2015	165	
69, 84, 85, 86, 691, 861	AF069O1R	10/03/2015	10/09/2015		325
79, 791	AM079O1R	10/03/2015	10/09/2015	20	
80	AM080O1R	10/03/2015	10/09/2015	10	
81	AM081O1R	10/03/2015	10/09/2015	25	

Unit(s)	Hunt Code	Date Open	Date Closed	License Type and #'s (2015)	
				Buck	Doe
82, 681 - East of Co Rd 46AA and east of the divide between the Saguache Creek drainage and Kerber Creek drainage	AM082O1R	10/03/2015	10/09/2015	100	
82, 681 - East of Co Rd 46AA and east of the divide between the Saguache Creek drainage and Kerber Creek drainage	AF082O1R	10/03/2015	10/09/2015		30
87	AM087O1R	10/03/2015	10/09/2015	330	
87	AF087O1R	10/03/2015	10/09/2015		130
88	AM088O1R	10/03/2015	10/09/2015	90	
88	AF088O1R	10/03/2015	10/09/2015		85
89	AM089O1R	10/03/2015	10/09/2015	75	
89	AF089O1R	10/03/2015	10/09/2015		80
90	AM090O1R	10/03/2015	10/09/2015	15	
90	AF090O1R	10/03/2015	10/09/2015		10
93	AM093O1R	10/03/2015	10/09/2015	10	
95	AM095O1R	10/03/2015	10/09/2015	40	
95	AF095O1R	10/03/2015	10/09/2015		40
97	AM097O1R	10/03/2015	10/09/2015	15	
98	AM098O1R	10/03/2015	10/09/2015	10	
99	AM099O1R	10/03/2015	10/09/2015	100	
99	AF099O1R	10/03/2015	10/09/2015		80
100	AM100O1R	10/03/2015	10/09/2015	40	
100	AF100O1R	10/03/2015	10/09/2015		30
101	AM101O1R	10/03/2015	10/09/2015	10	
102	AM102O1R	10/03/2015	10/09/2015	15	
104	AM104O1R	10/03/2015	10/09/2015	75	
104	AF104O1R	10/03/2015	10/09/2015		100
105	AM105O1R	10/03/2015	10/09/2015	300	
105	AF105O1R	10/03/2015	10/09/2015		360
106	AM106O1R	10/03/2015	10/09/2015	175	
106	AF106O1R	10/03/2015	10/09/2015		150
107	AM107O1R	10/03/2015	10/09/2015	100	
107	AF107O1R	10/03/2015	10/09/2015		50
109	AM109O1R	10/03/2015	10/09/2015	20	
109	AF109O1R	10/03/2015	10/09/2015		20
110	AM110O1R	10/03/2015	10/09/2015	80	
110	AF110O1R	10/03/2015	10/09/2015		80
111	AM111O1R	10/03/2015	10/09/2015	125	
111	AF111O1R	10/03/2015	10/09/2015		100
112, 113, 114, 115	AM112O1R	10/03/2015	10/09/2015	400	
112, 113, 114, 115	AF112O1R	10/03/2015	10/09/2015		400
116, 117, 122, 127	AM116O1R	10/03/2015	10/09/2015	400	

Unit(s)	Hunt Code	Date Open	Date Closed	License Type and #'s (2015)	
				Buck	Doe
116, 117, 122, 127	AF116O1R	10/03/2015	10/09/2015		450
118	AM118O1R	10/03/2015	10/09/2015	210	
118	AF118O1R	10/03/2015	10/09/2015		170
119	AM119O1R	10/03/2015	10/09/2015	245	
119	AF119O1R	10/03/2015	10/09/2015		190
120, 121, 125, 126	AM120O1R	10/03/2015	10/09/2015	450	
120, 121, 125, 126	AF120O1R	10/03/2015	10/09/2015		350
123	AM123O1R	10/03/2015	10/09/2015	100	
123	AF123O1R	10/03/2015	10/09/2015		80
124	AM124O1R	10/03/2015	10/09/2015	220	
124	AF124O1R	10/03/2015	10/09/2015		160
128	AM128O1R	10/03/2015	10/09/2015	105	
128	AF128O1R	10/03/2015	10/09/2015		135
130, 146	AM130O1R	10/03/2015	10/09/2015	20	
130, 146	AF130O1R	10/03/2015	10/09/2015		25
132, 139, 145	AM132O1R	10/03/2015	10/09/2015	200	
132, 139, 145	AF132O1R	10/03/2015	10/09/2015		400
133	AM133O1R	10/03/2015	10/09/2015	90	
133	AF133O1R	10/03/2015	10/09/2015		135
134	AM134O1R	10/03/2015	10/09/2015	90	
134	AF134O1R	10/03/2015	10/09/2015		135
135	AM135O1R	10/03/2015	10/09/2015	90	
135	AF135O1R	10/03/2015	10/09/2015		100
136, 143	AM136O1R	10/03/2015	10/09/2015	100	
136, 143	AF136O1R	10/03/2015	10/09/2015		80
137, 138, 144	AM137O1R	10/03/2015	10/09/2015	150	
137, 138, 144	AF137O1R	10/03/2015	10/09/2015		200
140, 147	AM140O1R	10/03/2015	10/09/2015	90	
140, 147	AF140O1R	10/03/2015	10/09/2015		135
142	AM142O1R	10/03/2015	10/09/2015	20	
142	AF142O1R	10/03/2015	10/09/2015		10
161	AM161O1R	10/03/2015	10/09/2015	18	
161	AF161O1R	10/03/2015	10/09/2015		10
201, 2	AM201O1R	10/10/2015	10/16/2015	40	
201	AF201O1R	10/10/2015	10/16/2015		25
214, 441	AM214O1R	10/03/2015	10/09/2015	15	
214, 441	AF214O1R	10/03/2015	10/09/2015		10
551	AM551O1R	10/03/2015	10/09/2015	2	
951	AM951O1R	10/03/2015	10/09/2015	40	
951	AF951O1R	10/03/2015	10/09/2015		40
TOTALS				**5727**	**5285**

B. Late Rifle Pronghorn Seasons

1. Late Rifle Season Dates, Units (as described in Chapter 0 of these regulations), Licenses.

Unit(s)	Hunt Code	Date Open	Date Closed	Licenses (2015)	
				Buck	Doe
9, 191	AF009L1R	11/01/2015	12/31/2015		70
97	AF097L1R	12/01/2015	12/31/2015		10
105	AF105L1R	12/01/2015	12/31/2015		90
110, 111, 118, 119, 123, 124	AF110L1R	12/05/2015	12/13/2015		500
112, 113, 114, 115	AF112L1R	12/05/2015	12/13/2015		100
116, 117, 122, 127	AF116L1R	12/01/2015	12/31/2015		500
120, 121, 125, 126	AF120L1R	12/05/2015	12/13/2015		150
130, 146	AF130L1R	12/01/2015	12/31/2015		25
136, 143	AF136L1R	12/01/2015	12/31/2015		200
137, 138, 144	AF137L1R	12/01/2015	12/31/2015		400
TOTALS					**2045**

C. Private Land Only Pronghorn Seasons

1. Private Land Only, Pronghorn, Dates, Units (as described in Chapter 0 of these regulations), Licenses.

Unit	Hunt Code	Date Open	Date Closed	Licenses (2015)	
				Male	Female
3, 301	AM003P5R	10/03/2015	10/18/2015	340	
3, 301	AF003P5R	10/03/2015	10/18/2015		190
4, 5	AM004P5R	10/03/2015	10/18/2015	35	
4, 5	AF004P5R	10/03/2015	10/18/2015		70
7	AM007P1R	10/03/2015	10/09/2015	10	
7	AF007P1R	10/03/2015	10/09/2015		15
8	AM008P1R	10/03/2015	10/09/2015	15	
8	AF008P1R	10/03/2015	10/09/2015		15
9, 191	AM009P1R	10/03/2015	10/09/2015	70	
9, 191	AF009P1R	10/03/2015	10/09/2015		70
13	AM013P5R	10/03/2015	10/18/2015	40	
13	AF013P5R	10/03/2015	10/18/2015		60
23	AM023P5R	10/03/2015	10/18/2015	25	
23	AF023P5R	10/03/2015	10/18/2015		35
79 - East of Rio Grande Canal, 791	AF079P5R	08/15/2015	12/31/2015		20
82, 681 - East of Co Rd 46AA and east of the divide between the Saguache Creek drainage and Kerber Creek drainage	AF082P5R	09/16/2015	09/30/2015		25
83	AM083P1R	10/03/2015	10/09/2015	6	
87	AF087P1R	10/03/2015	10/09/2015		70
87	AF087P5R	11/01/2015	12/31/2015		190
88	AF088P1R	10/03/2015	10/09/2015		50

Unit	Hunt Code	Date Open	Date Closed	Licenses (2015)	
				Male	Female
88	AF088P5R	11/01/2015	12/31/2015		60
128, 129, 133, 134, 135, 140, 141, 147	AF128P5R	12/01/2015	12/05/2015		200
129	AM129P1R	10/03/2015	10/09/2015	30	
129	AF129P1R	10/03/2015	10/09/2015		30
130, 146	AM130P1R	10/03/2015	10/09/2015	90	
130, 146	AF130P1R	10/03/2015	10/09/2015		75
130, 146	AF130P5R	12/01/2015	12/31/2015		75
131	AM131P1R	10/03/2015	10/09/2015	5	
131	AF131P1R	10/03/2015	10/09/2015		5
132, 139, 145	AF132P5R	12/01/2015	12/31/2015		400
136, 143	AM136P1R	10/03/2015	10/09/2015	170	
136, 143	AF136P1R	10/03/2015	10/09/2015		140
137, 138, 144	AM137P1R	10/03/2015	10/09/2015	210	
137, 138, 144	AF137P1R	10/03/2015	10/09/2015		170
141	AM141P1R	10/03/2015	10/09/2015	55	
141	AF141P1R	10/03/2015	10/09/2015		45
214, 441	AM214P5R	10/03/2015	10/18/2015	25	
214, 441	AF214P5R	10/03/2015	10/18/2015		25
			TOTALS	**1126**	**2035**

#265 - 269 VACANT

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

Unit(s)	Hunt Code	Open Date	Close Date
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
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

Unit(s)	Hunt Code	Open Date	Close Date
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
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

Unit	Hunt Code	Open Date	Close Date
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
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

Unit	Hunt Code	Open Date	Close Date
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
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

Unit	Hunt Code	Open Date	Close Date
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	2015 Resident Antlered Licenses	2015 Resident Antlerless Licenses	2015 Nonresident Antlered Licenses	2015 Nonresident Antlerless Licenses	2015 Resident Either Sex Licenses
1, 201	0	0	0	0	1
6	11	15	3	3	
7, 8, 191 except within 1/4 mile of Hwy 14	7	21	2	4	
12, 23, 24	3	4	0	0	
14	3	5	0	0	
15, 27	3	3	0	0	
16	7	4	0	0	
17	4	11	1	1	
18, 181	13	14	2	2	

Units	2015 Resident Antlered Licenses	2015 Resident Antlerless Licenses	2015 Nonresident Antlered Licenses	2015 Nonresident Antlerless Licenses	2015 Resident Either Sex Licenses
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	4	15	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.	3	4	0	1	
28	8	8	2	1	
36, 361	2	0	0	0	
37, 371	4	4	0	0	
38	1	2	0	0	
39, 46, 49, 500, 501	3	5	0	0	
41, 42, 52, 411, 421, 521	9	0	0	0	
41, 42, 421	0	18	0	3	
44, 45	1	0	0	0	
48, 55, 56, 481, 551, 561	1	0	0	0	
52, 411, 521	0	9	0	0	
65	1	0	0	0	
66	2	1	0	0	
67	2	1	0	0	
68, 79, 681	1	0	0	0	
74, 75	1	0	0	0	

Units	2015 Resident Antlered Licenses	2015 Resident Antlerless Licenses	2015 Nonresident Antlered Licenses	2015 Nonresident Antlerless Licenses	2015 Resident Either Sex Licenses
76	2	0	2	0	
76, 77, 751 Weminuche Wilderness Only	4	0	0	0	
161	7	3	0	0	
171	6	16	1	2	
191 except within 1/4 mile of Hwy 14	0	2	0	0	
TOTALS	**114**	**166**	**13**	**16**	**1**

E. Allocation of Licenses Between Seasons

1. Allocation of these licenses will float between the moose seasons in accordance with the hunt code chosen by successful applicants.

F. Special Restrictions

1. All moose licensees shall complete and return a harvest questionnaire provided by the Division within 30 days after the close of their hunting season. Any moose licensee who does not complete and return the mandatory questionnaire as required shall not be considered for any future moose license.

2. All moose harvested through hunting shall be submitted for inspection to an employee of the Division and Chronic Wasting Disease testing on or before the 5th working day after the taking thereof. Any licensee who takes an antlered moose shall personally present the head, with antlers attached, to any Division office. Any licensee who takes an antlerless moose shall personally present the head to any Division office. Moose heads must be unfrozen when presented for inspection. If not unfrozen, the Division may retain heads as necessary for thawing sufficient to extract the incisor teeth. A mandatory check report shall be completed at the time of inspection.

3. At the time of the mandatory check, the Division shall be authorized to extract and retain the incisor teeth.

Special Seasons

ARTICLE XII - SPECIAL HUNTING SEASONS/LICENSES FOR BIG GAME

#271 - BIG GAME ANIMALS CAUSING DAMAGE AND BIG GAME POPULATIONS OVER OBJECTIVE

A. Special Population Management Seasons for Big Game Ungulates

1. The Director shall have the authority to establish special management seasons for antlerless or female big game ungulates in specific game management units or portions thereof which significantly exceed the population objective, when the anticipated harvest from the current year's archery, muzzle-loading and regular rifle seasons did not occur. Provided further that the Director shall have the authority to establish these hunts between November 16 and February 28, to specify a time period for each of these hunts but not to exceed ten days each, and shall authorize hunters to use designated unfilled big game licenses for these hunts and units.

2. The Director shall have the authority to allocate antlerless deer and/or elk licenses on existing Ranching for Wildlife properties located in game management units where deer or elk populations significantly exceed the population objective. These licenses shall be in addition to the number of licenses allocated to each ranch pursuant to the Cooperative Agreement established in #210(A)(2). The additional allocation and use of the antlerless licenses provided for in this section shall be in the same proportion, by species (not sex), as established in the ranch's respective Cooperative Agreement and subject to the following provisions:

   a. No ranch shall be required to accept any additional antlerless licenses.

   b. The public allocation of such additional antlerless licenses shall only be offered to hunters who have successfully drawn antlered, either-sex or antlerless licenses for the same species on the ranch. Public hunters who choose to purchase one additional antlerless license from the Division shall be required to use the additional license during the season established for the license for which they drew. No more than one additional antlerless license will be available to any public hunter.

B. Special Game Damage Seasons for Big Game Ungulates

1. The Director shall have the authority to establish special hunting seasons for big game ungulates, between August 15 and February 28, when necessary to control damage to property. Seasons shall be for the taking of antlerless or female animals unless the Director has determined that the taking of antlered animals is necessary in order to alleviate the damage.

   a. Game damage hunts are limited to a maximum of 50 licenses per species per Game Management Unit or 30 percent of the antlerless, either-sex, or doe licenses issued for the DAU (whichever is greater), unless a distribution management plan establishing a different percentage has been approved by the Parks and Wildlife Commission or additional permits are approved by the Director or his designee.

   b. On private lands and Russell Lakes, Rio Grande and Higel State Wildlife Areas, the Area Wildlife Manager (AWM) is authorized to conduct these seasons based upon the following criteria:

      1. The AWM finds that such a season would be consistent with the distribution management plan approved by the Parks and Wildlife Commission.

      2. When there is no approved distribution management plan, the AWM finds that a season will reduce or eliminate damage for which the Division is liable, and that holding a season would be desirable considering

         aa. The species and number of animals involved.

         bb. The number of animals that would have to be removed to reduce or eliminate damage.

         cc. The location of the damage problem.

         dd. The type and extent of damage.

ee. The time of year and its relationship to the life history of the animals.

ff. The length of time such damage will continue without big game removal.

gg. Management closures, hunting seasons and other public use.

hh. The effect on population objectives for the GMU and DAU.

ii. Whether landowner operations (e.g., harvesting) or critical wildlife biological activities (e.g., fawning) would be interrupted.

jj. Safety risks.

kk. Any other pertinent factors.

3. The Area Wildlife Manager shall provide the landowner with special application forms for distribution to individuals of their choice. Participants shall submit the completed application form with payment to the Division office indicated on the application.

4. In the event the landowner cannot secure enough people to effect an adequate harvest the Division can assist in locating individuals.

c. The Division shall

1. Verify that damage or conflicts are occurring or can reasonably be anticipated to occur.

2. Designate what area shall be open to hunting.

3. Determine the manner of hunting that will be permitted.

4. Determine the number of hunters allowed to hunt in each designated area.

d. Hunting will be done under the direction of a District Wildlife Manager, following approval by the owner of land where such damage is occurring.

e. Hunters shall hunt in designated areas and on the dates indicated on the license.

1. A map or a written description of the designated area open to hunting (which would include, but would not be limited to landowner(s) name, game management unit, township, range and section(s) and/or identification of landmarks such as roads, rivers, or fence lines which coincide with boundaries), will be provided to each licensed hunter by the Division.

f. Any person who purchases a license for a game damage season shall be required to complete a Division harvest survey form and return it to the Area office that is nearest the location of the hunt no later than 5 days after the season ends.

C. Special Game Damage Licenses for Bear and Mountain Lion

1. The Director shall have the authority to establish special hunting licenses for mountain lion and bear, which allow for take in excess of the otherwise applicable limited license numbers or quotas, when necessary to control damage to private property.

    a. AWMs are authorized to issue these bear and mountain lion licenses to address specific animals determined after an investigation to be causing damage to private property.

        1. Bear or mountain lion licenses above the established limited license numbers or quota for the area may be issued only where necessary to take specific animals determined after an investigation to be causing damage to private property.

        2. Bear hunting authorized under this provision will be conducted between September 2 and the end of the fourth regular rifle season annually.

        3. Mountain lion hunting authorized under this provision will be conducted during established lion seasons.

        4. Licenses will be issued only if licenses are not otherwise available for purchase under standard license distribution methods or where mountain lion quotas have been reached in the area.

        5. License will be restricted by manner of take, period of time within the dates specified above, and location within the GMU(s) or DAU(s) in question as necessary to ensure the offending animal is appropriately targeted.

        6. Hunting will be conducted under the direction of a District Wildlife Manager.

    b. Any person who purchases a license shall be required to complete a Division harvest survey form and return it to the Area office that is nearest the location of the hunt no later than 5 days after the end of the hunting period authorized by the license.

    c. Bear and mountain lion taken pursuant to a license issued under this provision shall not be counted against the annual bag and possession limit for the species in question.

D. Special Hunting Season In Game Management Unit 20 For Cow Elk Normally Not Available For Harvest During Regular Or Late Big Game Seasons:

1. Season dates, license types, permit numbers will be established by the Director or his designee.

2. The Division will designate the area open to hunting, manner of take, and season dates which are necessary to achieve its population management objective for this population of elk. Hunting shall occur only during the designated time periods indicated on the hunter's license and only in those areas specifically designated on the map provided by the Division. Special Unit 20 cow elk hunts shall be established based on the following criteria: (a) the hunt does not fall within the criteria established for game damage hunts; (b) snow ground cover and/or other conditions favor are expected to favor successful hunting; (c) elk must be available to hunters in portions of Unit 20 which are open to

hunter access; and (d) no special season will be created under this regulation which would extend beyond February 15th.

3. Eligible hunters will be selected in the following priority: a) from the list of hunters who applied for a Unit 20 limited elk license and were unsuccessful; and b) from a new list of hunters established by the Division Northeast Regional office pursuant to notice in local newspapers. Such list will be established on a first-come, first-served basis.

4. Individuals who participate in this special hunt may also participate in any other season for elk if otherwise eligible to do so.

#272 BIG GAME DISEASE/ANIMAL HEALTH SEASONS

1. Special Hunting Seasons for Disease Management in Big Game

   a. The Director shall have the authority to establish special hunting seasons for big game, when hunting harvest has not been adequate to reduce the incidence of disease, to reduce emigration of infected animals, or to otherwise control expansion of the disease.

      1. No more than 200 licenses per species shall be issued annually per Game Management Unit (GMU) unless authorized by the Director

      2. Seasons shall be for the taking of antlerless or female animals unless the Director has authorized the issuance of male (antlered) licenses. No more than 10% of the licenses shall be issued for male (antlered) animals unless authorized by the Director.

      3. Licenses will be valid only in the unit(s) specified on the license. Licenses may be restricted to specific properties or areas as determined by the Area Wildlife Manager.

      4. License fees may be reduced when authorized by the Director, when necessary to ensure sufficient hunter participation, provided that no license is to be sold for less than $5.00. License fees shall be set to ensure recovery of the cost of the retail and system agent commissions.

      5. Multiple carcass tags may be issued with each license, as authorized by the Director. Provided further that the payment of separate license fees shall be required if licenses for more than one species are to be sold.

      6. Any licensee who takes deer or elk during any such season for the purpose of Chronic Wasting Disease (CWD) management shall submit the head from all animals taken when required to do so as a condition of the license, to the testing site specified at the time the license is issued, within 5 days after harvest. Hunters must complete the special survey tag available at any head collection site and attach it to the animal's head. Antlers and capes from harvested deer may be removed by hunters before submitting heads for sampling.

ARTICLE XIII - VACANT

ARTICLE XIV - VACANT

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Tracking number: 2015-00196

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

Colorado Parks and Wildlife (406 Series, Wildlife)

on 05/05/2015

2 CCR 406-2

CHAPTER W-2 - BIG GAME

The above-referenced rules were submitted to this office on 05/08/2015 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.

May 18, 2015 11:30:49

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 Professions and Occupations - Colorado Dental Board

CCR number

3 CCR 709-1

Rule title

3 CCR 709-1 DENTISTS & DENTAL HYGIENISTS 1 - eff 06/30/2015

Effective date

06/30/2015

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. Agent prescribed, administered, or dispensed, including dose, amount, and refills;

2. Date of the action; and

3. Rationale for prescribing, administering, or dispensing the agent.

E. A prescriptive order shall include:

1. Name of the patient,

2. Date of action,

3. Agent prescribed including dose, amount and refills, and

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. 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)

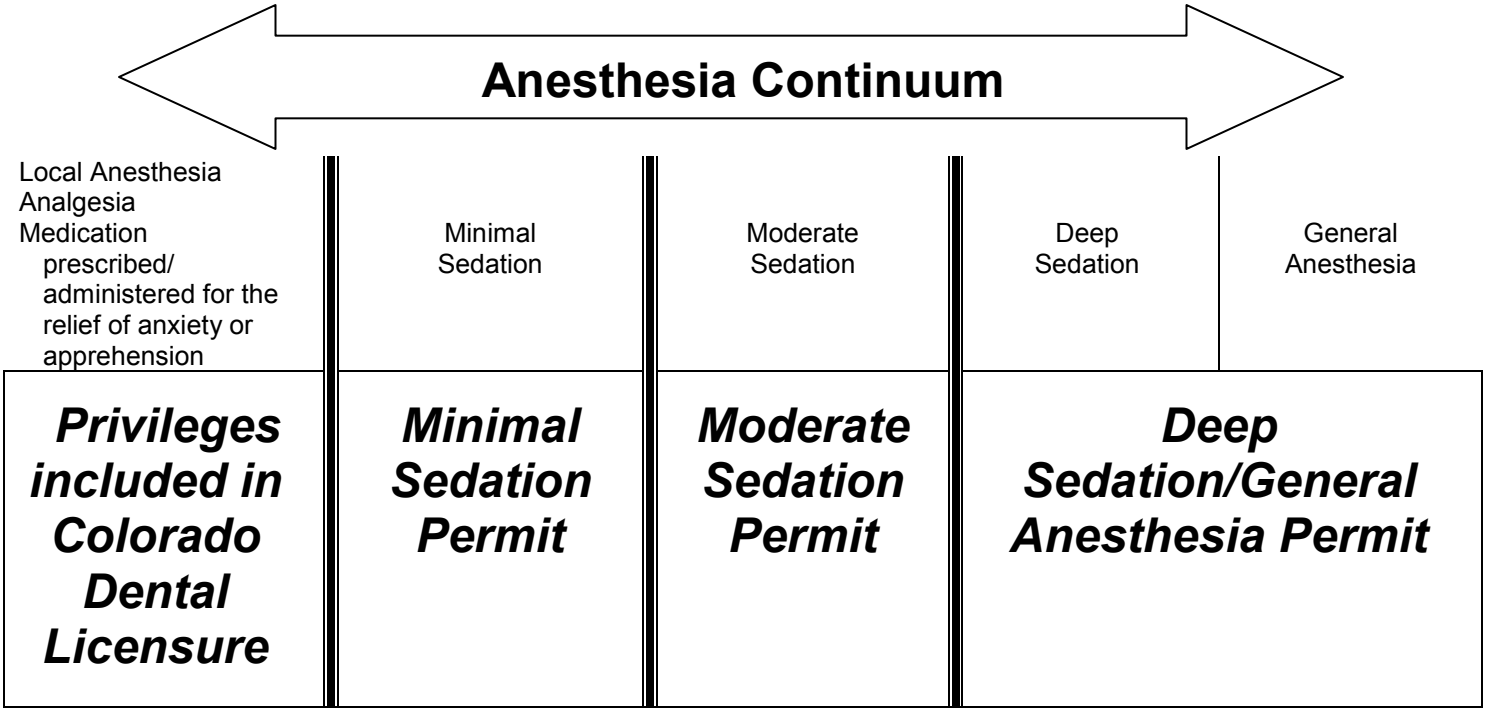
A. Introduction

1. This Rule XIV is authorized by the Dental Practice Act including, but not limited to, sections 12-35-107(1)(b)(II) and (III), (h), 12-35-113(1)(p) and (q), 12-35-114, 12-35-125(1)(f), 12-35-128(3)(a)(V), 12-35-129(1)(cc) and (ll), and 12-35-140, C.R.S.

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 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 not the route of administration 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 – Board-granted designation required, in addition to an anesthesia permit, 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 with a Colorado 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/her dental office is responsible for ensuring that the office meets the requirements outlined in this Rule XIV.

F. Anesthesia Permits

1. Local Anesthesia Permit for dental hygienists -

    a. A dental hygienist may obtain a Local Anesthesia Permit and administer local anesthesia or a local anesthetic reversal agent under the indirect supervision of a dentist.

    b. A Local Anesthesia 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. Inspection Permit -

    a. A dentist will be issued an Inspection Permit upon meeting the educational and/or experience requirements for a Moderate Sedation 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 Inspection Permit will be issued once and will remain valid for a maximum of 90 days.

c. An Inspection Permit can only be used to administer anesthesia for purposes of a Board authorized inspection.

3. Minimal Sedation Permit -

a. To administer minimal sedation, a dentist shall have a Minimal Sedation Permit, Moderate Sedation Permit, or a Deep Sedation/General Anesthesia Permit issued in accordance with this Rule XIV.

b. A Minimal Sedation Permit shall be valid for a period of 5 years, after which such 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 Permit -

a. To administer moderate sedation, a dentist shall have a Moderate Sedation Permit or a Deep Sedation/General Anesthesia Permit issued in accordance with this Rule XIV.

b. A Moderate Sedation Permit shall be valid for a period of 5 years after which such 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 5 years after which such permit may be renewed upon reapplication.

c. In order to initially apply for, 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 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 delivered.

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 Permit for Dental Hygienists

1. A dental hygienist may obtain a Local Anesthesia Permit after submitting a Board-approved application and upon successful completion of courses conducted by a school accredited by the Commission on Dental Accreditation (CODA).

2. Courses must meet the following requirements:

    a. 12 hours of didactic training, including but not limited to:

        i. Anatomy;

        ii. Pharmacology;

        iii. Techniques;

        iv. Physiology; and

        v. Medical Emergencies.

    b. 12 hours of clinical training that includes the administration of at least 6 infiltration and 6 block injections.

I. Minimal Sedation Permit - A dentist may obtain a Minimal Sedation 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 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 Permit or for a Deep Sedation/General Anesthesia Permit; or

3. A minimum of 16 hours of Board-approved coursework completed within the past 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 16 hours of classroom and clinical instruction.

4. In its discretion, 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. At a minimum, the applicant must demonstrate that he/she 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

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.

J. Moderate Sedation Permit - A dentist may obtain a Moderate Sedation 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 submit proof of having successfully completed one of the following:

a. A specialty residency or general practice residency recognized by the 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 submit proof of successfully completing moderate sedation course(s) and acceptable sedation cases as set forth below.

a. Education -

i. 60 hours of Board-approved coursework completed within the past 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. 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. 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. 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 60 hours of classroom and clinical instruction.

b. Experience -

i. Sedation cases performed by the applicant on 20 unique patients that were completed as part of or separate from the 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.

iii. If completed separate from the course, then all cases must be completed during the 1 year period immediately after completion of the approved training program.

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.

v. 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.

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. 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 – In its discretion, 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. At a minimum, the applicant must demonstrate that he/she 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 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 or 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.

2. Applications for 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 any level 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.

3. A separate clinical on-site inspection is not required for dentists who receive a Moderate Sedation Permit or a Deep Sedation/General Anesthesia Permit pursuant to this Rule XIV for 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 office meets the requirements outlined in this rule. This responsibility also extends to a dentist without a Moderate Sedation 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.

6. The dentist requiring the 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.

7. The clinical on-site inspection shall consist of the following parts:

   a. Review of the office equipment, records, and emergency medications required in sections M, N, and O, and subsections P.3 and P.4 of this Rule XIV.

   b. Surgical/Anesthetic Techniques.

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 demonstrate adequately managing a minimum of 8 emergencies.

d. Discussion Period.

8. The inspector shall be a Board-approved Colorado licensed physician or certified registered nurse anesthetist (CRNA) trained in dental outpatient deep sedation/general anesthesia and moderate sedation, or a dentist 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.

9. The inspector shall not have an unethical agreement or conflict of interest with an applicant.

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.

11. The documentation of the anesthesia inspection must be completed on Board-approved forms 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. An appropriate size bag-valve-mask apparatus or equivalent with an oxygen hook-up;

ii. Oral and nasopharyngeal airways;

iii. Appropriate emergency medications; and

iv. An external defibrillator - manual or automatic.

b. Equipment to monitor vital signs and oxygenation/ventilation, including:

i. A continuous pulse oximeter; and

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. An appropriate size bag-valve-mask apparatus or equivalent with an oxygen hook-up;

ii. Oral and nasopharyngeal airways;

iii. Appropriate emergency medications; and

iv. An external defibrillator - manual or automatic.

b. Equipment to monitor vital signs and oxygenation/ventilation, including:

i. A continuous pulse oximeter; and

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. An appropriate size bag-valve-mask apparatus or equivalent with an oxygen hook-up;

ii. Oral and nasopharyngeal airways;

iii. Appropriate emergency medications; and

iv. An external defibrillator - manual or automatic.

b. Equipment to monitor vital signs and oxygenation/ventilation, including:

i. A continuous pulse oximeter; and

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 (capnography) by July 1, 2016.

i. Additional emergency equipment and facilities, including:

i. Endotracheal tubes suitable for patients being treated;

ii. A laryngoscope with reserve batteries and bulbs,

iii. Endotracheal tube forceps (i.e. magill); and

iv. At least one additional airway device.

N. Anesthesia Gas Delivery Systems - 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 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. Parenteral access site and method, if utilized;

ii. Medication(s) administered - medication (including oxygen), dosage, route, and time given;

iii. Vital signs before and after anesthesia is utilized;

iv. Intravenous fluids, if utilized; and

v. Response to anesthesia - including any complications;

h. Condition of patient at discharge.

3. 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. Time anesthesia commenced and ended;

ii. At least every 5 minutes - blood pressure, heart rate, if clinically indicated by patient history, medical condition(s), or age; and

iii. At least every 15 minutes - oxygen saturation (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 include, but is not limited to the following for the administration of:

1. Local Anesthesia and Analgesia - General state of the patient.

2. Minimal Sedation -

a. Continuous heart rate and respiratory status;

b. Continuous oxygen saturation (SpO2);

c. Pre and post procedure blood pressure; and

d. Level of anesthesia on the continuum.

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;

    d. End-tidal carbon dioxide monitoring (capnography) by July 1, 2016; and

    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 (capnography) by July 1, 2016; and

    e. Level of anesthesia on the continuum.

5. When the level of cooperation in the pediatric or special needs patient does not reasonably allow for full compliance with some monitoring requirements, the treating 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.

    b. Additionally, any dentist applying for or maintaining a Moderate Sedation 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 the administration of minimal or moderate sedation, the supervising dentist and at least 1 other individual who is experienced in patient monitoring and documentation must be present.

b. Deep sedation/general anesthesia - During the administration of deep sedation or general anesthesia, the supervising dentist and at least 2 other individuals, one of whom is experienced in patient monitoring and documentation, must be present.

3. Monitoring and medication administration - 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 discharge after sedation and/or general anesthesia must be specifically authorized by the anesthesia provider.

R. Additional Requirements for Permits: Demonstration of Continued Competency and Reinstatement of Expired Permits

1. An applicant for a Local Anesthesia Permit, Minimal Sedation Permit, Moderate Sedation 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 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 a permit for at least 1 of the 5 years immediately preceding the application, or

   b. Submit proof satisfactory to the Board of an evaluation, completed within 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 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 Permit, Moderate Sedation Permit, or Deep Sedation/General Anesthesia Permit shall also expire. The dentist may apply for reinstatement of his/her Minimal Sedation Permit, Moderate Sedation 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 Permit shall also expire. The dental hygienist may apply for reinstatement of his/her Local Anesthesia Permit simultaneously with or subsequent to application for reinstatement of licensure.

4. If a dentist or dental hygienist has not had a permit within the 2 years immediately preceding an application for reinstatement of his/her permit, he/she shall demonstrate to the Board the same competency requirements set forth in section R.1 of this Rule XIV.

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 complete written report shall be submitted to the Board by the anesthetizing dentist or dental hygienist and his/her supervising dentist within 15 days of any anesthesia related incident resulting in significant morbidity to a patient or patient mortality. A morbidity or mortality report shall include:

1. The complete anesthesia record for the patient at issue;

2. The anesthetizing dentist's or dental hygienist's narrative of all events; and

3. All records related to the incident.

T. Effect of Pediatric Designation Requirements

1. Any dentist whose Board-issued permit to perform 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 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 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.

U. Board Reserved Rights

1. Dentists or dental hygienists utilizing anesthesia that requires 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 a permit, under this Rule XIV without first obtaining the required permit, or utilizing such anesthesia with 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 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 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 office utilized by the anesthesia provider in administering anesthesia.

8. The Board reserves all other powers and authorities set forth in the Dental Practice 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.

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

Division of Professions and Occupations - Colorado Dental Board

on 04/30/2015

3 CCR 709-1

DENTISTS & DENTAL HYGIENISTS

The above-referenced rules were submitted to this office on 04/30/2015 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.

May 18, 2015 11:30:18

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 - Office of Naturopathic Doctor Registration Program

CCR number

4 CCR 749-1

Rule title

4 CCR 749-1 NATUROPATHIC DOCTORS REGISTRATION, PRACTICE, AND DISCIPLINE 1 - eff 07/01/2015

Effective date

07/01/2015

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 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 seeking to reactivate an inactive registration must:

1. Submit a completed application for reactivation, pay a reactivation fee, and attest to complying with the professional liability insurance coverage requirements of § 12-37.3-114, C.R.S.

2. If inactive for less than two years, demonstrate continuing professional competency by providing 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. If inactive for at least two years but less than five years, demonstrate continuing professional competency, 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; or

   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; or

   c. Proof of continuing professional competency by any other means approved by the Director.

4. If inactive for five or more years, demonstrate continuing professional competency, by providing either:

   a. All of the following:

      i. 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;

      ii. Evidence of supervised practice for a period of no less than six months, subject to the terms established by the Director; and

      iii. Completion of an additional thirteen Professional Development Activities in Coursework, as defined in Rule 13, for each year or portion thereof the registration has been inactive.

   -OR-

   b. 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 F 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; and

c. Accrual of twenty-five Professional Development Activities per year of each renewal period, to include:

i. If treating a child who is less than age eight, three hours of Coursework or Mentoring per year solely related to pediatrics, and;

ii. If treating a child who is less than age two, two additional hours of Coursework or Mentoring per year solely related to pediatrics, to include subject matter related to recognizing a sick infant and when to refer an infant for more intensive care.

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 as detailed below. 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; and

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:

a. 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;

b. Documentation of the required PDA in compliance with the current Program Manual and this Rule; and

c. 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, to include:

1) If treating a child who is less than age eight, three hours of education or practicum training per year solely related to pediatrics; and

2) If treating a child who is less than age two, two additional hours of education or practicum training per year solely related to pediatrics, to include subject matter related to recognizing a sick infant and when to refer an infant for more intensive care; 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 a 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 15.

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 but less than five 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 reinstatement application; or

2. Documentation of completion, within the two years immediately preceding the application for reinstatement, of twenty-five Professional Development Activities, as defined in Rule 13, for each year or portion thereof that the registration was expired; or

3. Proof of competency to practice 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 must demonstrate competency to practice under § 24-34-102(8), by demonstrating either:

1. All 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 reinstatement application;

b. Evidence of supervised practice for a period of no less than six months, subject

to the terms established by the Director; and

c. Completion of an additional thirteen Professional Development Activities in Coursework, as defined in Rule 13, for each year or portion thereof the registration has been expired.

-OR-

2. Proof of competency to practice by any other means approved by the Director.

CYNTHIA H. COFFMAN
Attorney General

DAVID C. BLAKE
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Tracking number: 2015-00203

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

Division of Professions and Occupations - Office of Naturopathic Doctor Registration Program

on 05/11/2015

4 CCR 749-1

NATUROPATHIC DOCTORS REGISTRATION, PRACTICE, AND DISCIPLINE

The above-referenced rules were submitted to this office on 05/21/2015 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

May 26, 2015 11:36:25

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 1002-61

Rule title

5 CCR 1002-61 REGULATION NO. 61 - COLORADO DISCHARGE PERMIT SYSTEM 1 - eff 06/30/2015

Effective date

06/30/2015

DEPARTMENT OF HEALTH AND ENVIRONMENT

Water Quality Control Commission

5 CCR 1002-61

COLORADO DISCHARGE PERMIT SYSTEM

. . . .

61.14 GROUND WATER

61.14(1) APPLICABILITY

(b) The following facilities are specifically exempted from coverage under the ground water discharge provisions of this regulation:

. . . .

(x) Any graywater treatment works with a design flow of 2,000 gallons per day or less, if designed and constructed in accordance with Regulation 86 (5 CCR 1002-86).

. . . .

WATER QUALITY CONTROL DIVISION PROPOSED

61.68 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE – APRIL 13, 2015 RULEMAKING HEARING; EFFECTIVE DATE JUNE 30, 2015

The provisions of 25-8-202(1)(d) and (2), 25-8-401, 25-8-501, and 25-8-504, C.R.S., provide the specific statutory authority for the amendments to this regulation adopted by the Water Quality Control Commission (Commission). The Commission has also adopted, in compliance with 24-4-103(4) C.R.S., the following statement of basis and purpose.

BASIS AND PURPOSE

In coordination with the development of Regulation #86, the commission adopted an exemption from the ground water discharge provisions of Regulation #61 for certain graywater treatment works. The commission believes that graywater subsurface irrigation systems with a design flow of 2,000 gallons per day or less pose a similar risk to ground water as on-site wastewater treatment systems with a design capacity of 2,000 gallons per day or less, which currently has an exemption from ground water permitting in Regulation #61, and that a similar exemption for graywater treatment systems is appropriate as a matter of policy.

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: 2014-01248

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

Water Quality Control Commission (1002 Series)

on 05/11/2015

5 CCR 1002-61

REGULATION NO. 61 - COLORADO DISCHARGE PERMIT SYSTEM

The above-referenced rules were submitted to this office on 05/11/2015 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.

May 21, 2015 09:15:45

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 1002-86

Rule title

5 CCR 1002-86 Graywater Control Regulation 1 - eff 06/30/2015

Effective date

06/30/2015

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Water Quality Control Commission

5 CCR 1002-86

REGULATION NO. 86

GRAYWATER CONTROL REGULATION

86.1 Authority

This regulation is promulgated pursuant to the Colorado Water Quality Control Act (CWQCA) sections 25-8-101 through 25-8-703, C.R.S. In particular, it is promulgated under section 25-8-205(1)(g), C.R.S.

86.2 Purpose and Scope

A. Purpose

Graywater is expected to carry human pathogens with various risk levels and pathways that have the potential to be dangerous to public health. Therefore, the purpose of this regulation, as authorized by section 25-8-205(1)(g), is to describe requirements, prohibitions, and standards for the use of graywater for nondrinking water purposes, to encourage the use of graywater, and to protect public health and water quality.

B. Scope

This regulation establishes the allowed users and allowed uses of graywater within the state of Colorado; establishes the minimum state-wide standards for the location, design, construction, operation, installation, modification of graywater treatment works; and establishes the minimum ordinance or resolution requirements for a city, city and county, or county that chooses to authorize graywater use within its jurisdiction.

86.3 Severability

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

86.4 Voluntary Local Graywater Control Programs

Each local city, city and county, or county has the discretion to decide whether to adopt any of the graywater uses along with the associated minimum design criteria and control measures set forth in this regulation.

86.5 Materials Incorporated by Reference

The materials incorporated by reference cited herein include only those versions that were in effect as of June 30, 2015 and not later amendments to the incorporated material.

All materials referenced in this regulation may be examined online, where available, or at the Water Quality Control Division, at the Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530.

86.6 Applicability

A. All graywater uses and graywater treatment works must comply with the minimum requirements of this regulation as set forth in a local graywater control program.

1. Graywater treatment works may only be installed and operated within the jurisdiction of a city, city and county, or county with a local graywater control program.

2. Graywater treatment works installed prior to the effective date of this regulation are only allowed under a local graywater control program and must meet the local requirements adopted pursuant to these regulations. Graywater treatment works that reuse graywater for outdoor subsurface irrigation which were approved by a local public health agency prior to May 15, 2013 and pursuant to 5 CCR 1002-43, section 43.4(J) or pursuant to 5 CCR 1003-6, section IV.J, and which are in compliance with all requirements imposed by the local public health agency, are deemed to be in compliance with the requirements of this regulation unless or until any modification to the graywater treatment works is made.

3. Graywater treatment works installed under a local graywater control program which is later revoked or rescinded must within 365 days:

a. Be physically removed or permanently disconnected; or

b. Be regulated under a limited graywater control program for existing graywater systems. In this case, the local city, city and county, or county must continue the limited graywater control program for the existing graywater treatment works only; or

c. Be regulated under another jurisdiction's local graywater control program which assumes authority over the existing graywater treatment works. The existing graywater treatment works will need to comply with the new city, city and county, or county's local graywater control program, including any required graywater treatment works modifications.

4. In the event that a property with a compliant graywater treatment works is annexed or de-annexed into a jurisdiction with differing graywater requirements, the property owner must within 365 days:

a. Ensure the graywater treatment works is physically removed or permanently disconnected; or

b. Ensure the graywater treatment works is incorporated into another city, city and county, or county's local graywater control program. This includes conforming to the minimum requirements of the new local graywater control program and may include improving or modifying the graywater treatment works.

B. Graywater use is only allowed under a local graywater control program and must meet the local requirements adopted pursuant to these regulations. Unauthorized graywater use and discharges are prohibited.

C. This regulation does not apply to: discharges pursuant to a Colorado Discharge Permit System (CDPS) permit, wastewater that has been treated and released to state waters prior to

subsequent use, wastewater that has been treated and used at a domestic wastewater treatment works for landscape irrigation or process uses, on-site wastewater treatment works authorized under Regulation #43, reclaimed wastewater authorized under Regulation #84, water used in an industrial process that is internally recycled, and rainwater harvesting.

86.7 Enforcement and Division Oversight

A. The local city, city and county, or county with a local graywater control program has exclusive enforcement authority regarding compliance with the ordinance or resolution and, if applicable, rule.

B. The Colorado Water Quality Control Division oversees state-wide implementation of this regulation. As part of the state-wide implementation, a local city, city and county, or county that chooses to adopt a local graywater control program must notify the Water Quality Control Division within 60 days of program adoption, implementation, revision, or modification. A copy of the ordinance or resolution and, if applicable, rule must be submitted to: Water Quality Control Division, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530.

86.8 Definitions

(1) "Agronomic rate" means the rate of application of nutrients to plants that is necessary to satisfy the nutritional requirements of the plants.

(2) "Agricultural irrigation" means irrigation of crops produced for direct human consumption, crops where lactating dairy animals forage, and trees that produce nuts or fruit intended for human consumption. This definition includes household gardens and fruit trees.

(3) "Closed sewerage system" means either a permitted domestic wastewater treatment works, which includes a permitted and properly functioning OWTS with a design capacity more than 2,000 gpd, or a properly functioning and approved or permitted OWTS with a design capacity of 2,000 gpd or less.

(4) "Commission" means the Water Quality Control Commission created by section 25-8-201, C.R.S.

(5) "Component" means a subpart of a graywater treatment works which may include multiple devices.

(6) "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.

(7) "Design" means the process of selecting and documenting in writing the size, calculations, site specific data, location, equipment specification and configuration of treatment components that match site characteristics and facility use.

(8) "Design flow" means the estimated volume of graywater per unit of time for which a component or graywater treatment works is designed.

(9) "Dispersed subsurface irrigation" means a subsurface irrigation system including piping and emitters installed throughout an irrigation area.

(10) "Division" means the Water Quality Control Division of the Colorado Department of Public Health and Environment.

(11) “Facility” means any building, structure, or installation, or any combination thereof that uses graywater subject to a local graywater control program, is located on one or more contiguous or adjacent properties, and is owned or operated by the same person or legal entity. Facility is synonymous with the term operation.

(12) “Floodplain (100-year)” means an area adjacent to a river or other watercourse which is subject to flooding as the result of the occurrence of a one hundred (100) year flood, and is so adverse to past, current or foreseeable construction or land use as to constitute a significant hazard to public or environmental health and safety or to property or is designated by the Federal Emergency Management Agency (FEMA) or National Flood Insurance Program (NFIP). In the absence of FEMA/NFIP maps, a professional engineer shall certify the floodplain elevations.

(13) “Floodway” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot or as designated by the Federal Emergency Management Agency or National Flood Insurance Program. In the absence of FEMA/NFIP maps, a professional engineer shall certify the floodway elevation and location.

(14) “Graywater" means that portion of wastewater that, before being treated or combined with other wastewater, is collected from fixtures within residential, commercial, or industrial buildings or institutional facilities for the purpose of being put to beneficial uses. Sources of graywater are limited to discharges from bathroom and laundry room sinks, bathtubs, showers, and laundry machines. Graywater does not include the wastewater from toilets, urinals, kitchen sinks, dishwashers, or nonlaundry utility sinks.

(15) "Graywater treatment works" means an arrangement of devices and structures used to: (a) collect graywater from within a building or a facility; and (b) treat, neutralize, or stabilize graywater within the same building or facility to the level necessary for its authorized uses.

(16) “Indirect connection” means a waste pipe from a graywater treatment works that does not connect directly with the closed sewerage system, but that discharges into the closed sewerage system though an air break or air gap into a trap, fixture, receptor, or interceptor.

(17) “Legally responsible party” (1) For a residential property, the legally responsible party is the property owner. (2) For a corporation, the legally responsible party is a responsible corporate officer, either: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for approval application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. (3) For a partnership or sole proprietorship, the legally responsible party is either a general partner or the proprietor, respectively. (4) For a municipality, State, Federal, or other public agency, the legally responsible party is a principal executive officer or ranking elected official, either (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

(18) “Limited local graywater control program” is a local graywater control program limited to existing graywater treatment works and which does not accept new graywater treatment works.

(19) “Local agency” means any local city, city or county, county agency including, but not limited to, a department, local public health agency, or district which is delegated the authority to administer all or a portion of the responsibilities of the local graywater control program.

(20) “Local graywater control program” is a local ordinance or resolution and, if applicable, rule, including implementation practices, authorized by a city, city and county or county which is in compliance with the minimum requirements of this regulation.

(21) “Local public health agency” means any county, district, or municipal public health agency and may include a county, district, or municipal board of health.

(22) “Modification” means the alteration or replacement of any component of a graywater treatment works that can affect the quality of the finished water, the rated capacity of a graywater treatment works, the graywater use, alters the treatment process of a graywater treatment works, or compliance with this regulation and the local graywater control program. This definition does not include normal operations and maintenance of a graywater treatment works.

(23) “Mulch” means organic material including but not limited to leaves, prunings, straw, pulled weeds, and wood chips.

(24) “Mulch basin” means a type of irrigation or treatment field filled with mulch or other approved permeable material of sufficient depth, length, and width to prevent ponding or runoff. A mulch basin may include a basin around a tree, a trough along a row of plants, or other shapes necessary for irrigation.

(25) “On-site wastewater treatment system” or "OWTS" means an absorption system of any size or flow or a system or facility for treating, neutralizing, stabilizing, or dispersing sewage generated in the vicinity, which system is not a part of or connected to a sewage treatment works.

(26) “Percolation test” means a subsurface soil test at the depth of a proposed irrigation area to determine the water absorption capability of the soil, the results of which are normally expressed as the rate at which one inch of water is absorbed. The rate is expressed in minutes per inch.

(27) “Potable water system” means a system for the provision of water to the public for human consumption through pipes or other constructed conveyances, where such system has less than fifteen service connections or regularly serves less than an average of at least 25 individuals daily at least 60 days per year.

(28) “Professional engineer” means an engineer licensed in accordance with section 12-25-1, C.R.S.

(29) “Public nuisance” means the unreasonable, unwarranted and/or unlawful use of property, which causes inconvenience or damage to others, including to an individual or to the general public.

(30) “Public water system” means a system for the provision of water to the public 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.

(31) “Single family” means a detached or attached structure, arranged and designed as a single family residential unit intended to be occupied by not more than one family and that has separate water and sewer services connections from other dwelling units.

(32) “Site evaluation” means a comprehensive analysis of soil and site conditions for a graywater irrigation area.

(33) “Soil horizon” means layers in the soil column differentiated by changes in texture, color, redoximorphic features, bedrock, structure, consistence, and any other characteristic that affects water movement.

(34) “Soil profile test pit” means a trench or other excavation used for access to evaluate the soil horizons for properties influencing effluent movement, bedrock, evidence of seasonal high ground water, and other information to be used in locating and designing a graywater irrigation area.

(35) “Soil structure” means the naturally occurring combination or arrangement of primary soil particles into secondary units or peds; secondary units are characterized on the basis of shape, size class, and grade (degree of distinctness).

(36) “Suitable soil” means unsaturated soil in which the movement of water, air, and growth of roots is sustained to support healthy plant life and conserve moisture. Soil criteria for graywater subsurface irrigation are further defined in section 86.12.

(37) “Subsurface irrigation” means a discharge of graywater into soil a minimum of four inches (4”) and no deeper than twelve inches (12”) below the finished grade.

(38) “State waters” means any and all surface and subsurface waters which are contained in or flow in or through this state, but does not include waters in sewage systems, waters in treatment works of disposal systems, waters in potable water distribution systems, and all water withdrawn for use until use and treatment have been completed.

Table 8-1 Abbreviations and Acronyms

ANSI	American National Standards Institute
BK	Blocky
C.R.S.	Colorado Revised Statutes
CDPS	Colorado Discharge Permit System
FEMA	Federal Emergency Management Agency
gpd	gallons per day
GR	Granular
mg/L	milligrams per Liter
MPI	Minutes Per Inch
NFIP	National Flood Insurance Program
NSF	NSF International, formally known as National Sanitation Foundation
O&M	Operations and Maintenance
OWTS	On-site Wastewater Treatment System(s)
PR	Prismatic

86.9 Administration

A. Local Coordination

Nothing in this regulation shall be deemed to limit the authority of local cities, cities and counties, or counties, pursuant to section 29-1-203, C.R.S., to enter into intergovernmental agreements with each other pertaining to the coordinated adoption and operation of local graywater control program.

B. Minimum Requirements for a Local Graywater Control Program

1. The local city, city and county, or county that chooses to authorize graywater use within its jurisdiction must adopt an ordinance, resolution, or for certain program elements, a rule, which meets the following minimum requirements:

   a. The ordinance or resolution must be in compliance with the minimum requirements of this regulation.

   b. The ordinance or resolution must require compliance with all applicable federal, state, and local requirements.

   c. The ordinance or resolution must define the legal boundary of the local city, city and county, or county's local graywater control program which, at a maximum, is limited by the provisions in Titles 30 and 31 of the C.R.S. and the Colorado Constitution. If coordination with other agencies results in graywater implementation not being allowed within a portion of the local city, city and county, or county then these areas must be clearly excluded.

   d. The ordinance, resolution, or rule must explicitly state which graywater use categories defined in section 86.10 are allowed within the local city, city and county, or county's local graywater control program boundary.

   e. The ordinance or resolution must identify the local agency or agencies for all graywater regulatory activities including, but not limited to, design review, inspection, enforcement, tracking, and complaints.

   f. The ordinance or resolution must clearly indicate whether a fee(s) will be imposed for graywater activities, which local agency establishes the fee(s) and where fee(s) information is located.

   g. The ordinance or resolution must include a requirement for a searchable tracking mechanism that is indefinitely maintained by the local agency that must include, at a minimum, the following information:

      i. Legal address of each facility with graywater treatment works, allowed graywater uses at each facility, and a graywater treatment works description.

      ii. The legally responsible party associated with every graywater treatment works.

      iii. Where required, the certified operator associated with every graywater treatment works.

      iv. Any changes to the legally responsible party, certified operator, and status of the graywater treatment works must be updated within 60 days.

   h. The ordinance, resolution, or rule must include a requirement for a local agency to develop a graywater design criteria document. The design criteria document must meet the minimum requirements of this regulation but may be more stringent. The graywater design criteria must define a site and soil evaluation methodology for subsurface irrigation systems unless only single family dispersed subsurface irrigation systems are allowed.

i. The ordinance, resolution, or rule must include a requirement and process for the local agency to approve or deny the installation of new graywater treatment works or modifications to an existing graywater treatment works. As part of the approval process the local agency(ies) must review a design submittal and perform a construction verification in accordance with:

i. All graywater treatments works must submit the following design information: the graywater uses, graywater treatment system location, design flow calculations for the graywater treatment works, fixtures that are the source of the graywater, design of the plumbing or irrigation system, any supporting soil analysis information, a description of the products or components, legally responsible party information, and contact information for system designer or professional engineer and operator, if applicable. The application for graywater treatment works must be signed by the legally responsible party.

ii. All graywater treatment works must be inspected or verified and accepted by the local agency.

j. The ordinance, resolution, or rule must require all graywater treatment works to have an operation and maintenance (O&M) manual. The O&M manual must remain with the graywater treatment works throughout the system's life and be updated based on each modification and approval made to the system. The O&M manual must be transferred, upon change of ownership or occupancy, to the new owner or tenant.

k. The ordinance, resolution, or rule must clearly indicate if any reporting is required for graywater regulatory activities, the required parameters, and the required frequency.

l. The ordinance or resolution must include a requirement for the local agency to administer and enforce the provisions of the ordinance or resolution.

C. Discontinuation of local graywater program

A local city, city and county, and county that decides to revoke or rescind an adopted local graywater control program must require that all previously allowed graywater treatment works either:

1 Be physically removed or permanently disconnected; or

2. Be regulated under a limited graywater control program for existing graywater systems. In this case, the local city, city and county, or county must continue a limited graywater control program for the existing graywater treatment works. The limited graywater program must include a graywater control program for the existing graywater treatment works but no new graywater treatment works. At a minimum, the limited graywater control program must include items: 86.9(B) items a, b, e, g, j, and l. If the limited graywater control program allows modifications to existing treatment works then items d, h, and i must also be included; or

3. Be regulated under another jurisdiction's local graywater control program which assumes authority over the existing graywater treatment works. The existing graywater treatment works will need to comply with the new city, city and county, or county's local graywater control program, including any required graywater treatment works modifications.

86.10 Graywater Use Categories

General: The graywater use categories allowed are defined below. A single facility may have multiple graywater treatment works as long as all applicable use and design requirements are satisfied.

A. Category A: Single family, subsurface irrigation

Category A graywater use must meet the following:

1. Allowed users: Single family.

2. Allowed graywater sources: Graywater collected from bathroom and laundry room sinks, bathtubs, showers, and laundry machines.

3. Allowed uses: Outdoor, subsurface irrigation within the confines of the legal property boundary.

4. Design flow: The design flow for a single family graywater treatment works is limited to a 400 gallons per day (gpd) or less combined flow for all approved uses.

B. Category B: Non-single family, subsurface irrigation, 2,000 gallons per day (gpd) or less

Category B graywater use must meet the following:

1. Allowed users: Non-single family users.

2. Allowed graywater sources: Graywater collected from bathroom and laundry room sinks, bathtubs, showers, and laundry machines.

3. Allowed uses: Outdoor, subsurface irrigation within the confines of the legal property boundary.

4. Design flow: The design flow for a non-single family graywater treatment works is limited to 2,000 gallons per day (gpd) or less for outdoor irrigation for the entire facility.

C. Category C: Single family, indoor toilet and urinal flushing, subsurface irrigation

Category C graywater use must meet the following:

1. Allowed users: Single family.

2. Allowed graywater sources: Graywater collected from bathroom and laundry room sinks, bathtubs, showers, and laundry machines.

3. Allowed uses: Indoor toilet and urinal flushing and outdoor, subsurface irrigation within the confines of the legal property boundary.

4. Design flow: The design flow for a single family graywater treatment works is limited to 400 gallons per day (gpd) or less combined flow for all approved uses.

D. Category D: Non-single family, indoor toilet and urinal flushing, subsurface irrigation

Category D graywater use must meet the following:

1. Allowed users: Non-single family users.

2. Allowed graywater sources: Graywater collected from bathroom and laundry room sinks, bathtubs, showers, and laundry machines.

3. Allowed uses: Indoor toilet and urinal flushing and outdoor, subsurface irrigation within the confines of the legal property boundary.

4. Design flow: There is no maximum design flow for a non-single family graywater treatment works for indoor toilet and urinal flushing. There is no maximum design flow for the amount of wastewater from the facility that can go to a closed sewerage system. The design flow is limited to 2,000 gallons per day (gpd) or less for outdoor irrigation for the entire facility.

86.11 Graywater Use Requirements - Control Measures

A. All graywater uses

All graywater treatment works must be operated in accordance with the following control measures:

1. Graywater must be collected in a manner that minimizes the presence or introduction of:

   a. hazardous or toxic chemicals in the graywater to the greatest extent possible;

   b. human excreta in the graywater to the greatest extent possible;

   c. household wastes; and

   d. animal or vegetable matter.

2. Use of graywater is limited to the confines of the facility that generates the graywater.

3. The graywater treatment works must be operated and maintained in accordance with the O&M manual, including all manufacturer recommended maintenance activities. The O&M manual must remain with the graywater treatment works throughout the system's life and be updated based on each modification and approval made to the system. The O&M manual must be transferred, upon change of ownership or occupancy, to the new owner or tenant.

   a. For Category D graywater treatment works that have a capacity to receive greater than 2,000 gallons per day (gpd), operational and maintenance records must be maintained for a minimum of the past five (5) years.

4. The owner or operator of a graywater treatment works must minimize exposure of graywater to humans and domestic pets.

5. Graywater use and graywater treatment works must not create a public nuisance.

6. Graywater must not be stored for more than 24 hours unless the graywater has been treated by a graywater treatment works that meets the design requirements of section 86.12. All graywater must be stored inside a tank(s) that meets the design requirements of section 86.12(B)(5).

7. Temporary or semi-temporary connections from the potable water system or public water system to the graywater treatment works are prohibited. Permanent connections from the

potable water system or public water system to the graywater treatment works must meet the design requirements of 86.12(B)(6).

B. Subsurface irrigation graywater use

Graywater use for subsurface irrigation must also comply with the following additional control measures:

1. Agricultural irrigation with graywater is prohibited.

2. Irrigation is prohibited when the ground is frozen, plants are dormant, during rainfall events, or the ground is saturated.

3. Irrigation scheduling must be adjusted so that application rates are closely matched with soil and weather conditions.

4. Graywater must be applied in a manner that does not result in ponding, runoff, or unauthorized discharge to state waters. For dispersed subsurface irrigation systems, the graywater must be applied at an agronomic rate. For mulch basins systems, the graywater must not be applied in excess of the soil adsorption rate.

5. For mulch basin systems, mulch must be replenished and undergo periodic maintenance as needed to reshape or remove material to maintain surge capacity and to prevent ponding and runoff.

C Indoor toilet and urinal flushing graywater use

Graywater use for indoor toilet and urinal flushing must also comply with the following additional control measures.

1. Graywater for toilet and urinal flushing use must be disinfected.

   a. Graywater treatment works that utilize chlorine for disinfection must have a minimum of 0.2 mg/L and a maximum of 4.0 mg/L of free chlorine residual throughout the indoor graywater plumbing system, including fixtures.

   b. Single family graywater treatment works that utilize non-chemical methods, such as UV, for disinfection must have a chlorine puck present in each toilet or urinal tank.

2. Graywater for toilet and urinal flushing must be dyed with either blue or green food grade vegetable dye and be visibly distinct from potable water.

86.12 <u>Graywater Treatment Works - Design Criteria</u>

A. Graywater treatment works flow projections

All graywater treatment works must be sized using the following flow projection methods:

1. Residential users: Flow to graywater treatment works must be calculated on the occupancy and the fixtures connected to the graywater treatment works. The calculated graywater flow is the number of occupants multiplied by the estimate graywater flow in terms of gpd/occupant from the attached fixtures.

a. The occupancy must be calculated based on a minimum of two (2) occupants for the first bedroom and one (1) occupant for each additional bedroom.

b. The estimated graywater flow from each fixture is based on the design flow of the fixture. If the fixture's design flow is unknown then the estimated graywater flow per occupant is:

i. Traditional fixtures: 25 gpd/occupant for each shower, bathtub, and wash basin and 15 gpd/occupant for each clothes washer.

ii. Water saving fixtures: 20 gpd/occupant for each shower, bathtub, and wash basin and 8 gpd/occupant for each clothes washer.

2. Non-residential users: Graywater treatment works must be sized in accordance with fixture or water use records taking into account the number of fixtures attached to the graywater treatment works.

B. Graywater treatment works design criteria

All graywater treatment works must comply with the following design criteria:

1. The graywater treatment works must be designed to meet the design requirements of this regulation and meet any additional requirements of the Colorado Plumbing Code.

2. The design flow of each treatment component or combination of multiple components must be greater than the calculated peak graywater production if upstream of the storage tank or no tank is present.

3. The graywater treatment works must have a diversion valve that directs graywater to either the graywater treatment works or a closed sewerage system. The diversion valve must be easily operable and clearly labeled. The diversion valve must be constructed of material that is durable, corrosion resistant, watertight, and designed to accommodate the inlet and outlet pipes in a secure and watertight manner. The bypass line must be indirectly connected to the closed sewerage system.

4. Piping that allows the treatment process(es) or a storage tank to be bypassed prior to graywater use is prohibited unless the graywater bypass piping has an indirect connection to a closed sewerage system.

5. Graywater treatment works must include a tank to collect and store graywater except for subsurface irrigation systems that discharge to a mulch basin which meets the sizing criteria of section 86.12(C)(3)(g)(ii)(a) for Category A and C graywater treatment works or 86.12(D)(4)(g)(ii)(a) for Category B and D graywater treatment works.

The storage tank must:

a. be made of durable, non-absorbent, water-tight, and corrosion resistant materials;

b. be closed and have access openings for inspection and cleaning;

c. be vented:

i. for indoor tanks: the tanks must be vented to the atmosphere outside of the house;

ii. for outdoor tanks: the storage tank must have a downturned screened vent;

d. have an overflow line:

i. with the same or larger diameter line as the influent line;

ii. without a shut off valve;

iii. that is trapped to prevent the escape of gas vapors from the tank; and

iv. that is indirectly connected to the closed sewerage system;

e. have a valved drain line with the same or larger diameter line as the influent line that is indirectly connected to the closed sewerage system;

f. be a minimum of 50 gallons;

g. be placed on a stable foundation; and

h. have a permanent label that states “CAUTION! NON-POTABLE WATER. DO NOT DRINK.”

6. Category A and Category B graywater treatment works may, but are not required to, have a backup potable water system that provides potable irrigation water when graywater is not being produced or is produced in insufficient quantities. Category C and Category D graywater treatment works must have a backup potable water system connection.

Backup potable water system connections must meet the following requirements:

a. For non-public water system, potable water system connections: uncontrolled cross connections between a potable water system and a graywater treatment works are prohibited. All cross connections must be protected by a reduced pressure principle backflow prevention zone assembly or an approved air gap.

b. For public water system potable water system connections: uncontrolled cross connections between a public water system and a graywater treatment works are prohibited. The graywater treatment works design must protect the public water system from cross connections by meeting the requirements of Regulation #11: Colorado Primary Drinking Water Regulations.

7. Use or installation of graywater treatment works cannot be used as a factor to reduce the design, capacity or soil treatment area requirements for OWTS or domestic wastewater treatment works.

8 Wastewater from graywater treatment works (e.g., filter backwash water) must be properly contained and disposed into a closed sewerage system or an approved Underground Injection Control (UIC) well.

9. All graywater piping shall be clearly distinguished and must be clearly labeled, including pipe identification and flow arrows.

10. Graywater treatment works located in a 100-year floodplain must meet or exceed the requirements of FEMA and the local emergency agency. The graywater system must be

designed to minimize or eliminate infiltration of floodwaters into the system and prevent discharge from the system into the floodwaters.

11. Graywater treatment works are prohibited in floodways.

12. The graywater treatment works must be located:

    a. Within the confines of the legal property boundary and not within an easement; and

    b. Outdoor tanks must not be exposed to direct sunlight.

C. Category A: Graywater treatment works design criteria

In addition to the requirements in sections 86.12(A) and 86.12(B), graywater treatment works for "Category A: Single family, subsurface irrigation" uses must include the following components:

1. The graywater treatment works must include either:

    a. For mulch basin systems, a filter is not required but the mulch basin design must meet the design criteria in sections 86.12(C)(2) and 86.12(C)(3).

    b. For dispersed subsurface irrigation systems, a cartridge filter is required. The cartridge filter must be a minimum of 60 mesh. The filter must be located between the storage tank and the irrigation system. If a pump is being used to pressurize the graywater distribution system, the filter must be located after the pump. The dispersed subsurface irrigation system must meet design criteria in sections 86.12(C)(2) and 86.12(C)(4).

2. Subsurface irrigation system designs, including dispersed subsurface irrigation systems and mulch basin systems, must meet the following criteria:

    a. The subsurface irrigation components of the graywater irrigation system must be installed a minimum of four inches (4") and a maximum of twelve inches (12") below the finished grade.

    b. The subsurface irrigation components of the graywater irrigation system must be installed in suitable soil, as defined in section 86.8(36).

    c. There must be a minimum of twenty-four inches (24") of suitable soil between the subsurface irrigation components of the graywater irrigation system and any restrictive soil layer, bedrock, concrete, or the highest water table. Restrictive soil layers are soil types 4, 4A, and 5 in Table 12-2.

    d. The system design shall provide the user with controls, such as valves, switches, timers, and other controllers, as appropriate, to ensure the distribution of graywater throughout the entire irrigation zone.

    e. When used, emitters shall be designed to resist root intrusion and shall be of a design recommended by the manufacturer for the intended graywater flow and use. Minimum spacing between emitters shall be sufficient to deliver graywater at an agronomic rate and to prevent surfacing or runoff.

    f. All irrigation supply lines shall be polyethylene tubing or PVC Class 200 pipe or better and Schedule 40 fittings. All joints shall be pressure tested at 40 psi (276

kPa), and shown to be drip tight for five minutes before burial. Drip feeder lines can be poly or flexible PVC tubing.

g. All irrigation systems must meet the following setback distances in Table 12-1.

Table 12-1: Graywater System Setback Requirements

Minimum Horizontal Distance Required from:	Graywater Storage Tank	Irrigation Field
Buildings	5 feet	2 feet
Property line adjoining private property	10 feet	10 feet
Property line adjoining private property with supporting property line survey	1.5 feet	1.5 feet
Water supply wells	50 feet	100 feet
Streams and lakes	50 feet	50 feet
Seepage pits or cesspools	5 feet	5 feet
OWTS disposal field	5 feet	25 feet
OWTS tank	5 feet	10 feet
Domestic potable water service line	10 feet	10 feet
Public water main	10 feet	10 feet

h. The irrigation field may only be located on slopes of less than thirty percent (30%) from horizontal.

3. Mulch basin systems must be designed to meet the following requirements:

a. A site and soil evaluation must be conducted for each proposed graywater irrigation area to determine the site suitability. The site and soil evaluation must include:

i Site information, including:

(a) a site map; and

(b) location of proposed graywater irrigation area in relation to physical features requiring setbacks in Table 12-1.

ii. Soil investigation to determine long-term acceptance rate of a graywater irrigation area as a design basis. Soil investigation must be completed by either:

(a). a visual and tactile evaluation of soil profile test pit, or

(b) a percolation test.

b. Irrigation rates must not exceed maximum allowable soil loading rates in Table 12-2 based on the finest textured soil in the twenty-four inches (24”) of suitable soil beneath the subsurface irrigation components.

Table 12-2: Soil Type Description and Maximum Hydraulic Loading Rate

Soil Type	USDA Soil Texture	USDA Structure - Shape	USDA Soil Structure-Grade	Percolation Rate (MPI)	Loading Rate for Graywater (gal./sq. ft./day)
0	Soil Type 1 with more than 35% Rock (>2mm); Soil Types 2-5 with more than 50% Rock (>2mm)	--	0 (Single Grain)	Less than 5	Not suitable without augmentation 1.0 with augmentation
1	Sand, Loamy Sand	--	0	5-15	Not suitable without augmentation 1.0 with augmentation
2	Sandy Loam, Loam, Silt Loam	PR BK GR	2 (Moderate) 3 (Strong)	16-25	0.8
2A	Sandy Loam, Loam, Silt Loam	PR, BK, GR 0 (none)	1 (Weak) Massive	26-40	0.6
3	Sandy Clay Loam, Clay Loam, Silty Clay Loam	PR, BK, GR	2, 3	41-60	0.4
3A	Sandy Clay Loam, Clay Loam, Silty Clay Loam	PR, BK, GR 0	1 Massive	61-75	0.2
4	Sandy Clay, Clay, Silty Clay	PR, BK, GR	2, 3	76-90	Not suitable
4A	Sandy Clay, Clay, Silty Clay	PR, BK, GR 0	1 Massive	91-120	Not suitable
5	Soil Types 2-4A	Platy	1, 2, 3	121+	Not suitable

c. Suitable soil may consist of original, undisturbed soil or original soil that is augmented. Not suitable soil may be augmented as needed to ensure suitable soil is used.

d. If the original soil is augmented, the mixture used for augmentation must meet the following criteria to ensure that suitable soil is achieved:

i. The mixture must have an organic content that is at least five percent (5%) and no greater than ten percent (10%);

ii. The mixture must be a well blended mix of mineral aggregate (soil) and compost where the soil ratio depends on the requirements for the plant species; and

iii. The mineral aggregate must have the following gradation:

Sieve Size	Percent Passing
3/8	100
No. 4	95 - 100
No. 10	75 - 90
No. 40	25 - 40
No. 100	4 - 10
No. 200	2 - 5

e. If the original soil is augmented, the additional soil must be tilled into the native soil a minimum of six inches (6") below irrigation application zone.

f. Soil types 0 and 1 must be augmented before use. Soil type 4, 4A, and 5 are not suitable for subsurface irrigation.

g. Mulch basins must be designed to meet the following requirements:

i. Mulch shall be permeable enough to allow rapid infiltration of graywater.

ii. The minimum void space mulch basin volume must be either:

(a) Three (3) times the anticipated average daily flow for graywater treatment works without a storage tank to allow for graywater volume surges and to prevent surfacing or runoff.

(b) One and a half (1.5) times the anticipated average daily flow for graywater treatment works with storage tank meeting the section 86.12(B)(5) design criteria.

iii. Piping to mulch basins must discharge a minimum of four inches (4") below grade into a container for dispersal of graywater into the mulch basin. The container must be designed to have four inches (4") of freefall between the invert of the discharge pipe and the mulch. The container must have an access lid for observation of flow and to check mulch levels.

iv. The mulch basin must have a minimum depth of twelve inches (12") below grade and not more than twenty four (24") below grade.

4. Dispersed subsurface irrigation systems must be sized using one of the following methodologies:

a. Irrigation area equation:

The minimum graywater irrigation area must be calculated using the following equation.

LA = GW / (CF x ET x PF)

Where:

LA = Landscaped area (square feet)

GW = Estimated graywater flow (gallons per week)

CF = 0.62 (square foot x inch / gallon) = ((7.48 gallons/ 1-cu-ft) / 12 inch/ft)

ET = Evapotranspiration rate (inch / week), as determined by USDA Natural Resources Conservation Service CO652.0408 “Figure CO4-1: Map of Colorado Climate Zones” dated April 1978, or weekly averages based on actual conditions;

PF = Plant factor, 0.5;

or,

b. The mulch basin system design criteria in Section 86.12(C)(3), except 86.12(C)(3)(g).

D Category B: Graywater treatment works design criteria

In addition to the requirements in sections 86.12(A) and 86.12(B), graywater treatment works for “Category B: Non-single family, subsurface irrigation, 2,000 gallons per day (gpd) or less” uses must include the following treatment components:

1. The graywater treatment works must include either:

   a. For mulch basin systems, a filter is not required but the mulch basin design must meet design criteria in sections 86.12(D)(3) and 86.12(D)(4).

   b. For dispersed subsurface irrigation systems, a cartridge filter is required. The cartridge filter must be a minimum of 60 mesh located between the storage tank and the irrigation system. If a pump is being used to pressurize the graywater distribution system the filter must be located after the pump. The dispersed subsurface irrigation system must meet the design criteria in sections 86.12(D)(3) and 86.12(D)(4), except 86.12(D)(4)(g).

2. Signage: Notification shall include posting of signs of sufficient size to be clearly read with the language below in the dominant language(s) expected to be spoken at the site.

   a. A permanent warning sign must be visible at all fixtures from which graywater is collected. The signs must state that, “WATER FROM THIS FIXTURE IS REUSED. CHEMICALS, EXCRETA, PETROLEUM OILS AND HAZARDOUS MATERIALS MUST NOT BE DISPOSED DOWN THE DRAIN”;

   b. Each room that contains graywater treatment works components must have a sign that says “CAUTION GRAYWATER TREATMENT WORKS, DO NOT DRINK, DO NOT CONNECT TO THE POTABLE DRINKING WATER SYSTEM. NOTICE: CONTACT BUILDING MANAGEMENT BEFORE PERFORMING ANY WORK ON THIS WATER SYSTEM.”; and

   c. Each irrigation area must have a sign that says “CAUTION GRAYWATER BEING USED FOR IRRIGATION. DO NOT DRINK, DO NOT CONNECT TO THE POTABLE DRINKING WATER SYSTEM.”

3. Subsurface irrigation system designs, including dispersed subsurface irrigation systems and mulch basin systems, must meet the following criteria:

   a. The subsurface irrigation components of the graywater irrigation system must be installed a minimum of four inches (4") and a maximum of twelve inches (12") below the finished grade.

   b. The subsurface irrigation components of the graywater irrigation system must be installed in suitable soil, as defined in section 86.8(36).

   c. There must be a minimum of twenty-four inches (24") of suitable soil between the subsurface irrigation components of the graywater irrigation system and any restrictive soil layer, bedrock, concrete, or the highest water table. Restrictive soil layers are soil types 4, 4A, and 5 in Table 12-2.

   d. The system design shall provide the user with controls, such as valves, switches, timers, and other controllers, as appropriate, to ensure the distribution of graywater throughout the entire irrigation zone.

   e. When used, emitters shall be designed to resist root intrusion and shall be of a design recommended by the manufacturer for the intended graywater flow and use. Minimum spacing between emitters shall be sufficient to deliver graywater at an agronomic rate and to prevent surfacing or runoff.

   f. All irrigation supply lines shall be polyethylene tubing or PVC Class 200 pipe or better and Schedule 40 fittings. All joints shall be pressure tested at 40 psi (276 kPa), and shown to be drip tight for five minutes before burial. Drip feeder lines can be poly or flexible PVC tubing.

   g. All irrigation systems must meet the setback distances in Table 12-1.

   h. The irrigation field may only be located on slopes of less than thirty percent (30%) from horizontal.

4. Dispersed subsurface irrigation systems and mulch basin systems must be designed to meet the following requirements:

   a. A site and soil evaluation must be conducted for each proposed graywater irrigation area to determine the site suitability. The site and soil evaluation must include:

      i Site information, including:

         (a) a site map; and

         (b) location of proposed graywater irrigation area in relation to physical features requiring setbacks in Table 12-1.

      ii. Soil investigation to determine long-term acceptance rate of a graywater irrigation area as a design basis. Soil investigation must be completed by either:

         (a) a visual and tactile evaluation of soil profile test pit, or

         (b) a percolation test.

b. Irrigation rates must not exceed maximum allowable soil loading rates in Table 12-2 based on the finest textured soil in the twenty-four inches (24") of suitable soil beneath the subsurface irrigation components.

c. Suitable soil may consist of original, undisturbed soil or original soil that is augmented. Not suitable soil may be augmented as needed to ensure suitable soil is used.

d. If the original soil is augmented, the mixture used for augmentation must meet the following criteria to ensure that suitable soil is achieved:

i. The mixture must have an organic content that is at least five percent (5%) and no greater than ten percent (10%);

ii. The mixture must be a well blended mix of mineral aggregate (soil) and compost where the soil ratio depends on the requirements for the plant species; and

iii. The mineral aggregate must have the following gradation:

Sieve Size	Percent Passing
3/8	100
No. 4	95 - 100
No. 10	75 - 90
No. 40	25 - 40
No. 100	4 - 10
No. 200	2 - 5

e. If the original soil is augmented, the additional soil must be tilled into the native soil a minimum of six inches (6") below irrigation application zone.

f. Soil types 0 and 1 must be augmented before use. Soil type 4, 4A, and 5 are not suitable for subsurface irrigation.

g. Mulch basins must be designed to meet the following requirements:

i. Mulch shall be permeable enough to allow rapid infiltration of graywater.

ii. The minimum void space mulch basin volume must be either:

(a) Three (3) times the anticipated average daily flow for graywater treatment works without a storage tank to allow for graywater volume surges and to prevent surfacing or runoff.

(b) One and a half (1.5) times the anticipated average daily flow for graywater treatment works with storage tank meeting the section 86.12(B)(5) design criteria.

iii. Piping to mulch basins must discharge a minimum of four inches (4") below grade into a container for dispersal of graywater into the mulch basin. The container must be designed to have four inches (4") of freefall between the invert of the discharge pipe and the mulch. The

container must have an access lid for observation of flow and to check mulch levels.

iv. The mulch basin must have a minimum depth of twelve inches (12") below grade and not more than twenty four (24") below grade.

E. Category C: Graywater treatment works design criteria

In addition to the requirements in Sections 86.12(A) and (B), graywater treatment works for "Category C: Single family, indoor toilet and urinal flushing, subsurface irrigation" uses must include the following treatment components:

1. The graywater treatment works must be certified under "Class R" of NSF/ANSI 350 Onsite Residential and Commercial Water Reuse Treatment Systems.

2. If a disinfection process is not part of NSF/ANSI 350-2011 equipment, separate disinfection system equipment is required. For graywater treatment works that use sodium hypochlorite (bleach), the graywater treatment works must be capable of providing a free chlorine residual of 0.2 to 4.0 mg/L in the graywater throughout the indoor graywater plumbing system.

3. The graywater treatment works must include a dye injection system that is capable of providing a dye concentration that is visibly distinct from potable water.

4. Category C graywater treatment works that use graywater for subsurface irrigation may divert graywater prior to the disinfection and dye process. The subsurface irrigation system design must meet:

   a. For mulch basin systems, the mulch basin design must meet the design criteria in sections 86.12(C)(2) and 86.12(C)(3).

   b. For dispersed subsurface irrigation systems, the dispersed subsurface irrigation system must meet design criteria in sections 86.12(C)(2) and 86.12(C)(4).

F. Category D: Graywater treatment works design criteria

In addition to the requirements in Sections 86.12(A) and (B), graywater treatment works for "Category D: Non-single family, indoor toilet and urinal flushing, subsurface irrigation" uses must include the following treatment components:

1. The graywater treatment works must be certified under "Class R" or "Class C" of NSF/ANSI 350 Onsite Residential and Commercial Water Reuse Treatment Systems. Required classification shall be dictated by the size of the graywater treatment works and if the graywater sources are residential or commercial as defined by NSF/ANSI 350.

2. Separate disinfection system equipment is required if a disinfection process is not part of NSF/ANSI 350-2011 equipment. A graywater treatment works must be capable of providing a free chlorine residual of 0.2 to 4.0 mg/L in the graywater throughout the indoor graywater plumbing system.

3. The graywater treatment works must include a dye injection system that is capable of providing a dye concentration that is visibly distinct from potable water.

4. Signage: Notification shall include posting of signs of sufficient size to be clearly read with the language below in the dominant language(s) expected to be spoken at the site.

a. A permanent warning sign must be visible at all fixtures from which graywater is collected. The signs must state that, “WATER FROM THIS FIXTURE IS REUSED. CHEMICALS, EXCRETA, PETROLEUM OILS AND HAZARDOUS MATERIALS MUST NOT BE DISPOSED DOWN THE DRAIN”;

b. Each room that contains graywater treatment works components must have a sign that says “CAUTION GRAYWATER TREATMENT WORKS, DO NOT DRINK, DO NOT CONNECT TO THE POTABLE DRINKING WATER SYSTEM. NOTICE: CONTACT BUILDING MANAGEMENT BEFORE PERFORMING ANY WORK ON THIS WATER SYSTEM.”; and

c. Each toilet and urinal must have a sign that says: “TO CONSERVE WATER, THIS BUILDING USES TREATED NON-POTABLE GRAYWATER TO FLUSH TOILETS AND URINALS.”

5. Category D graywater treatment works that use graywater for subsurface irrigation may divert graywater prior to the disinfection and dye process. The subsurface irrigation system design must meet:

a. For mulch basin systems, the mulch basin design must meet design criteria in sections 86.12(D)(3) and 86.12(D)(4).

b. For dispersed subsurface irrigation systems, the dispersed subsurface irrigation system must meet the design criteria in sections 86.12(D)(3) and 86.12(D)(4), except 86.12(D)(4)(g).

6. For graywater treatment works that have a capacity to receive greater than 2,000 gallons per day, the design must be prepared under the supervision of and submitted with the seal and signature of a professional engineer licensed to practice engineering in the State of Colorado in accordance with the requirements of the Colorado Department of Regulatory Agencies (DORA) – Division of Registrations.

86.13 Operation and Maintenance Manual

All graywater systems must have an O&M manual. The O&M manual must include the following items:

A. A graywater treatment works description including: equipment list, design basis data including but not limited to, design volumes, design flow rates of each component and service area, system as-built drawing, and process description.

B. Maintenance information for the graywater treatment works including but not limited to: component maintenance schedule, instructions for component repair, replacement, or cleaning, replacement component source list, testing and frequency for potable containment device, and instructions for periodic removal of residuals.

C. Operational ranges for parameters including but not limited to: disinfectant concentration levels, filter replacement parameters, pressure ranges, tank level, and valve status under normal operation.

D. Step-by-step instructions for starting and shutting down the graywater treatment works including but not limited to: valve operation, any electrical connections, cleaning procedures, visual inspection, and filter installation.

E. A guide for visually evaluating the graywater treatment works and narrowing any problem scope based on alarm activations, effluent characteristics, system operation, and history.

F. A list of graywater control measures in which the graywater treatment works must be operated.

86.14 Certified Operator

A graywater treatment works must be operated by qualified personnel who meet any applicable requirements of Regulation #100, the Water and Wastewater Facility Operators Certification Requirements.

86.15 - 86.20 Reserved

86.21 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE; APRIL 13, 2015 RULEMAKING, FINAL ACTION MAY 11, 2015, EFFECTIVE JUNE 30, 2015

The provisions of sections 25-8-202(1)(c) and 25-8-205(1)(g), C.R.S., provide the specific statutory authority for the Graywater Control Regulation adopted by the Water Quality Control Commission (commission). The commission has also adopted, in compliance with section 24-4-203(4), C.R.S., the following statement of basis, specific statutory authority, and purpose.

BASIS AND PURPOSE

I. Purpose

The commission has determined that the adoption of the requirements set forth in Regulation #86 are necessary to protect public health and the environment in the state. The commission believes that the implementation of graywater use in Colorado will proceed more expeditiously by limiting the initial regulatory scope. This approach promotes development of local graywater programs through two initial graywater uses with specific treatment and control measure requirements. The commission expects the adoption of modifications to Regulation #86 over time to allow for additional graywater uses, graywater users, and expanded treatment options. The commission anticipates future reviews of this regulation to include a review for improved organization and readability, and also anticipates that the next review will consider whether to allow agricultural irrigation as a use, and whether to adopt variance provisions.

It is the intent of the commission that this regulation promote the use of graywater by providing a comprehensive framework which, when followed, will assure responsible use of graywater compatible with the state's public policy to foster the health, welfare and safety of the inhabitants of the state of Colorado and to protect, maintain, and improve, where necessary and reasonable, the water quality in Colorado.

II. House Bill 13-1044 Background

House Bill 13-1044 was signed into law on May 15, 2013, and authorizes the use of graywater in Colorado. The legislation defined “graywater” and “graywater treatment works” and established a basic implementation framework for graywater use within Colorado.

Under the statute, each local city, city and county, or county are able to decide whether to allow graywater use within its jurisdiction via the adoption of a resolution or ordinance that meets minimum local, state and federal requirements, including but not limited to the Colorado Plumbing Board regulations, local graywater control programs, water rights requirements, and operator certification requirements. All graywater users must wait until all relevant regulations are effective before implementing graywater treatment works.

III. Regulatory Goals

Through adoption of this regulation, the commission is encouraging the use of graywater. Because graywater has the potential to be a human pathogen pathway, the commission is adopting measures to

adequately protect public health. The graywater regulation is structured so that local governments will have flexibility to adopt ordinances, resolutions, and rules that are appropriate in each individual circumstance. Local graywater control programs are voluntary, and may allow one or both of the authorized graywater uses. The local graywater control program may be more stringent but must meet the minimum requirements of Regulation #86. Since neither the local implementing agencies nor the state agencies were allocated funds for graywater regulation, ordinance, code, resolution, and other supporting graywater control legal framework, the regulation aims to be cognizant of resource limitations linked to local implementation. At this time, the commission is authorizing two graywater uses – indoor toilet flushing and outdoor subsurface irrigation. The commission anticipates that the allowed graywater uses may be expanded in the future after Colorado gains some experience and further scientifically based research can define the risks and benefits.

IV. Applicability

The statute states that, "graywater may only be used in areas where the local city, city and county, or county has adopted an ordinance or resolution approving the use of graywater", and ordinances and resolutions must be "in compliance" with the commission's regulation and other federal, state, and local. §§ 25-8-205(1)(g)(II), 31-11-107(1) and 31-15-601(1)(m), C.R.S.

The Commission declined to grandfather preexisting graywater systems. All graywater systems in Colorado must meet the requirements of this regulation.

There are some on-site waste water treatment systems ("OWTS") that, in addition to disposal, use some of the water generated from these systems for subsurface irrigation. The purpose of these systems is sewage disposal. These systems were approved prior to May 15, 2013, pursuant to *Regulation #43: On-Site Wastewater Treatment System Regulation* ("OWTS") (5 CCR 1002-43.4(J) or *Individual Sewage Disposal System Guidelines* ("ISDS") (5 CCR 1003-6.IV.J) which allows a local public health agency to approve "experimental" OWTS or ISDS systems. The record indicated there are a small number of these systems, less than 10. The Commission adopted section 86.6(A)(2) to address these systems. These systems will continue to operate under Regulation No. 43 and will be deemed in compliance with this regulation unless and until modifications are made, at which time the system will need to evaluate its system and to the extent applicable must come into compliance with requirements of this regulation.

A local city, city and county or county that adopts a graywater ordinance or resolution must include the ability to compel graywater users to discontinue the practice in the event the program is discontinued. Where a local jurisdiction adopts a local graywater program, and later decides to discontinue the local graywater control program, the local government may either fully discontinue the program or adopt a limited graywater control program to allow existing graywater systems to continue. The "limited graywater control program" option means that the previously adopted local control program (including all Regulation #86 requirements) can be limited to the existing graywater treatment works and that no additional applications for graywater systems will be accepted.

V. Enforcement and Division Oversight

The statute conveys exclusive enforcement authority regarding compliance with the local ordinance or resolution to the local jurisdiction. The commission does not intend to directly enforce on individual users or graywater treatment works that are located within a local graywater control program. In cases where there is no local graywater control program in place, graywater use within the local jurisdiction will not be authorized and the user (not the local agency) may face enforcement action from the Water Quality Control Division (division).

A local city, city and county, or county that chooses to adopt a local graywater control program must notify the Division within 60 days of adoption and provide a copy of the ordinance, or resolution and, if

applicable, rule. The division may review the ordinance or resolution to ensure that the ordinance or resolution meets the minimum intent of Regulation #86, and may take action to compel any local graywater program to conform to the minimum requirements of the regulation.

VI. Definitions

The commission relied upon existing regulatory definitions where possible and adopted definitions for several terms not already defined in statute. The definitions of the terms “cross-connection” and “public water system” were taken from Regulation #11: Colorado Primary Drinking Water Regulations. The definitions of the terms “component”, “design”, “design flow”, “floodplain”, “floodway”, “local public health agency”, “on-site wastewater treatment system”, “percolation test”, “site evaluation”, “soil horizon”, “soil profile test pit”, and “soil structure” were taken or modified from Regulation #43: On-site Wastewater Treatment System Regulation. The definitions of the terms “agronomic rate”, “agricultural irrigation”, and “Division” were taken or modified from Regulation #84: Reclaimed Water Control Regulation. The definition for “indirect connection” was modified from the International Plumbing Code 2012 edition definition of an “indirect waste pipe”. The definitions of the terms “suitable soil” and “subsurface irrigation” were modified from Washington Administrative Code Chapter 246-274.

The commission created definitions for “closed sewerage system”, “facility”, “legally responsible party”, “local agency”, “local graywater control program”, “modification”, “public nuisance”, and “single family”.

VII. Administration

In section 86.9 of the regulation, the commission set mandatory minimum requirements for a resolution or ordinance and, if applicable, rule as adopted by a local agency. The minimum requirements are intended to ensure that the local graywater control program meets the statutory requirements and to ensure a comprehensive graywater program. Based on stakeholder feedback, the regulation allows some administration elements to be authorized in rule, rather than in ordinance or resolution. The minimum requirements are meant to be flexible recognizing that many local agencies will incorporate graywater into existing business processes. A local agency may adopt more stringent standards in its ordinance, resolution, or rule.

A local government may only authorize graywater use in accordance with federal, state, and local requirements. The city, city and county, or county is ultimately responsible for legal compliance with its own ordinance or resolution. Before a local city, city and county, or county adopts an ordinance or resolution to authorize the use of graywater, a board of county commissioners or a municipal governing body is encouraged to coordinate with other local agencies, including but not limited to, the local board of health, local public health agencies, any water and wastewater service providers, and basin water quality authorities. Coordination with other local agencies may be accomplished through memorandums of agreement, memorandums of understanding, agency referral mechanism, or agency agreements. The commission anticipates there may be circumstances where one regulatory entity’s rules and regulations could impact the legality of graywater use in a portion of an overall jurisdiction. For example, if a county allows graywater use but a portion of the county is served by a public water system that does not have appropriate water rights to allow graywater uses, this portion of the county must be excluded from the local graywater control program.

The ordinance, resolution, or rule must clearly state the requirements for graywater use within the jurisdiction. The local graywater control program must outline: the allowed graywater category(ies), the graywater treatment design criteria, site and soil evaluation methodology (if applicable), any regulatory fees, any testing requirements, or specific local requirements. The regulation does not require that an ordinance impose fees or water quality reporting.

A local agency’s graywater program must include a tracking mechanism for all graywater treatment works, a regulatory approval process, and mechanisms to ensure that on-going graywater use is done in compliance with the requirements of the resolution, ordinance, or rule (e.g., control measures are being met). The commission concludes that a local graywater program must address all graywater treatment

works within a jurisdiction, including single family users. Current information on the installed graywater treatment works will be useful in the event of an outbreak investigation and during property transfers. Information regarding the legally responsible party associated with every graywater treatment works will also allow the local jurisdiction to have a contact for the decision maker of each graywater treatment works.

The commission determined that the ordinance or resolution must define the local regulatory structure to implement the program to ensure compliance with the resolution or ordinance. The ordinance or resolution must clearly state which agency(ies) are involved in a local graywater control program and each agency's roles and responsibilities. These requirements are meant to encourage coordination within and between agencies.

Since the local jurisdiction will have enforcement authority, the local graywater control program must include violation notification mechanisms and escalation or enforcement actions. Possible violations of the ordinance or resolution that cause enforcement actions include, but are not limited to: not testing backflow prevention devices as required, not complying with control measures, and installation of a new or modification of an existing system without going through an approval process.

The local jurisdiction will be responsible for coordinating with the Water and Wastewater Facility Operator Board to ensure that any Regulation #100: Water and Wastewater Facility Operator Certification Requirements are being satisfied. The commission encourages local jurisdictions to incorporate a mechanism for operator compliance assurance and a referral mechanism to the Water and Wastewater Facility Operator Board.

VIII. Graywater Categories

The commission is authorizing two uses for graywater - subsurface irrigation and indoor toilet /urinal flushing. There were several factors that guided the commission in determining the graywater categories within the two allowed graywater uses, including the population exposed, potential health exposure, potential cross-connection control risk, and environmental risk. The commission established a major category distinction between a single family residential user and all other users (referred to in the regulation as non-single family). The commission anticipates that a single family user will be financially and personally vested in keeping the household graywater treatment works operating properly. Single family residents will likely be aware of the health status of the other residents in their immediate household. In contrast, non-single family users may not be as diligent in following graywater control measures, may not understand the implications to other graywater users, or may not be responsible for maintaining a graywater treatment works. Accordingly, four graywater use categories were created to address single family and non-single family graywater use for subsurface irrigation (Categories A and B) and indoor toilet and urinal flushing (Categories C and D).

Within the four graywater categories, the commission is adopting daily graywater flow restrictions to ensure that graywater treatment works are consistent with other commission regulations. The commission decided to define a daily graywater flow rate rather than use the building occupancy for a variety of reasons. A daily flow rate is more consistent with the plumbing code, and is more consistent with other commission regulations. Based on a joint American Water Works Association Research Foundation (AwwaRF) and American Water Works Association (AWWA) study titled the Residential End Uses of Water, approximately 30 to 35 gallons per day (gpd) of graywater is produced per person and approximately 18.5 gpd/person is used for toilet flushing. The commission decided on a flow limit of 400 gpd for single family users which is roughly the amount of graywater produced by 10 people and the amount that 22 people could use for indoor toilet flushing. The non-single family limit of 2,000 gpd is roughly the amount of graywater produced by 50 people and the amount that 108 people could use for indoor toilet flushing.

Graywater is expected to contain nitrogen, phosphorus, and total dissolved solids which are regulated pollutants for groundwater discharges under Regulation #41 (5 CCR 1002-41). The commission determined that the potential risks to groundwater from graywater systems are similar to the risk posed by

decentralized onsite wastewater treatment systems. Therefore, at the same time as adopting this control regulation, the commission revised Regulation #61 (section 61.14(1)(b)) to exempt graywater treatment works from the requirement to obtain a discharge permit.

IX. Control Measures

In addition to design requirements, the commission is adopting control measures, which are the required routine actions for graywater treatment works. The control measures compliment the design criteria. The control measures attempt to control potential graywater exposure though: limitation of graywater contamination at the point of production (e.g., sink), proper operation of the treatment process, and limitation of graywater exposure (e.g., toilet or irrigation system). For example, the design criteria for indoor toilet flushing use requires the installation of a dye injection system and the associated control measure is the daily operation of the dye injection system. The control measures are the critical barrier to protect public health and environment after installation of the graywater treatment works. The adopted control measures were developed after reviewing other states' graywater programs and the International Plumbing Code requirements. Some control measures are required for all graywater uses, while other control measures are only required for subsurface irrigation or indoor toilet flushing.

A. Control measures required for all graywater uses

- Graywater must be collected in a manner that minimizes the presence or introduction of hazardous or toxic chemicals to the greatest extent possible. Residual hazardous or toxic chemicals may result from activities including, but not limited to: the use of cleaning chemicals; the use of hazardous household products; waste from a water softener; cleaning car parts; washing greasy or oily rags or clothing; rinsing paint brushes; disposal of pesticides, herbicides, or other chemicals; disposing of waste solutions from home photo labs or similar hobbyist or home occupation activities; or from other home maintenance activities.

- *Graywater must be collected in a manner that minimizes the presence or introduction of human excreta to the greatest extent possible.* Human excreta may result from activities such as, but not limited to: washing diapers, washing soiled garments, and washing infectious garments.

- *Graywater must be collected in a manner that minimizes the presence or introduction of household wastes*. Residual household wastes may result from activities including, but not limited to: the use of cleaning chemicals; pharmaceuticals, or from home maintenance activities.

- *Graywater must be collected in a manner that minimizes the presence or introduction of animal or vegetable matter.* Animal or vegetable matter may result from activities such as but not limited to: cooking, cleaning, and washing pets

- *Use of graywater is limited to the confines of the facility that generates the graywater.* This control measure is a statutory requirement.

- *The graywater treatment works must be operated and maintained in accordance with the O&M manual, including all manufacturer recommended maintenance activities.* On the surface this control measure is similar to the administration section which requires each graywater treatment works to have an O&M manual. However, this control measure requires that the O&M manual be actively followed and be used to guide proper operation and maintenance of a graywater treatment works. The commission included a five (5) year minimum O&M recordkeeping requirement for Category D graywater treatment works that have a capacity to receive equal to or greater than 2,000 gallons per day since maintenance of these systems will be essential to protect public health. In the event of

an outbreak, having records will allow public health officials to have a baseline of operational information to ensure that the graywater treatment works was properly operated.

- *The owner or operator of a graywater treatment works must minimize exposure of graywater to humans and domestic pets.* Research indicates that graywater is to be expected to contain human pathogens. Therefore, the commission considers minimization of exposure to humans and pets as a common sense measure to limit possible pathogen pathways. The commission understands that some exposures will be necessary for graywater treatment works maintenance, cleaning, aerosolization when flushing of urinals and toilets, and irrigation system maintence. Users should be aware that human pathogens are likely present, and should therefore limit their exposure as much as possible and take protective measures.

- *Graywater use and graywater treatment works must not create a public nuisance.* Graywater use and graywater treatment works must not create public nuisances such as odors and disease vectors (e.g., mosquitoes) habitat.

- *Graywater must not be stored for more than 24 hours unless the graywater has been treated by a graywater treatment works that meets the design requirements of section 86.12. All graywater must be stored inside a tank(s) that meets the design requirements of section 86.12.* Graywater stored for an extended time period will create an environment that encourages microorganism growth. Extended storage of untreated graywater will result in anaerobic (a.k.a. no oxygen) conditions and unpleasant odors. Colorado water rights laws will likely impact storage of treated graywater for an extended time period. In addition, this requirement is in conformance with the 2015 International Plumbing Code.

- *Temporary or semi-temporary connections from the potable water system or public water system to the graywater treatment works are prohibited. Permanent connections from the potable water system or public water system must be controlled with an appropriate backflow prevention assembly or backflow prevention method.* Temporary potable water connections to graywater treatment works are not allowed. An example of a temporary connection is a hose submerged in a graywater storage tank to provide irrigation water during vacation. The prohibition was put in place since temporary connections will not undergo design approval or have an appropriate backflow prevention assembly or backflow prevention method. While temporary connections are prohibited, graywater treatment works may have a permanent connection from a potable water system or public water system. Permanent connections from the potable water system or public water system must be controlled with an appropriate backflow prevention assembly or backflow prevention method as required in section 86.12.

B. Additional control measures required for subsurface irrigation use

- *Agricultural irrigation with graywater is prohibited*. In order to be protective of public health, and because insufficient information was presented at this hearing to fully evaluate the risk to public health, graywater may not be used for agricultural irrigation. The definition of agricultural irrigation includes household gardens, fruit trees, and other flora intended for human consumption. This is especially critical for local jurisdictions that allow household produced food products to be sold at farmers markets. The commission considers “human consumption” to mean any food or beverage consumed by humans, regardless of the processing method (e.g., raw, fermented, baked, canned).

- *Irrigation is prohibited when the ground is frozen, plants are dormant, during rainfall events, or the ground is saturated.* The commission intends to ensure that graywater use

does not result in ponding, runoff, or unauthorized discharge to state waters. Therefore, graywater irrigation under these conditions is not allowed.

- *Irrigation scheduling must be adjusted so that application rates are closely matched with soil and weather conditions*. The amount of water needed for irrigation is dependent on a variety of local conditions such as the flora being irrigated, weather condition, and local soils. The user needs to be mindful that the required amount of graywater and nutrients will change over time and therefore the graywater application rate must also be adjusted.

- *Graywater must be applied at an agronomic rate which does not result in ponding, runoff, or unauthorized discharge to state waters.* The definition of agronomic rate is generally consistent with the definition from Regulation #84 (which addresses centralized reclaimed water operations). While this regulation does not require a water quality test, such testing is encouraged. Graywater use must not result in ponding, runoff, or unauthorized discharge to state waters.

- *For mulch basin systems, mulch must be replenished as required due to decomposition of organic manner. Mulch basins must undergo periodic maintenance, reshaping or removal of material to maintain surge capacity and to prevent ponding and runoff.* Microbial activity within the mulch basins will result in decomposition of organic material. To maintain the required storage volume and soil permeability, the mulch beds must undergo routine maintenance. This requirement was based on the 2013 California Plumbing Code.

C. Additional control measures required for indoor toilet flushing use

- *Graywater for toilet and urinal flushing use must be disinfected*. Graywater research indicates that graywater is to be expected to contain human pathogens. Therefore, the commission is using a multi-barrier approach, including the addition of a potent disinfectant to inhibit the presence of organisms, pathogens and viruses in the graywater distribution system.

- *Graywater treatment works that utilize chlorine for disinfection must have a minimum of 0.2 mg/L and a maximum of 4.0 mg/L of free chlorine residual throughout the indoor plumbing system, including fixtures.* The free chlorine residual requirement is generally consistent with Regulation #11. The commission is not implying that graywater for indoor toilet and urinal flushing must be treated to potable water standards, as defined by Regulation #11, but that a free chlorine residual range of 0.2 to 4.0 mg/L is reliably detectable and not high enough to adversely impact plumbing fixtures.

- *Single family graywater treatment works that utilize non-chemical methods, such as UV, for disinfection must have a chlorine puck present in each toilet tank.* The commission wants to give some flexibility to Category C systems and not require chlorine injection for all systems. Since some disinfectants, such as UV, do not have a residual present in the distribution system, a chlorine puck will inhibit the presence of organisms, pathogens, and viruses within the toilet tank and bowl.

- *Graywater for toilet and urinal flushing must be dyed with either blue or green food grade vegetable dye and be visibly distinct from potable water.* The commission adopted this requirement from the 2012 International Plumbing Code. Dye is a visual indicator that the water within the building is non-potable. Because single family households are not required to have signage for indoor toilet flushing, the dye serves as the notification method that a cross connection has occurred and graywater is entering the potable water lines of the operation.

X. Treatment Works Design Criteria

A. Design criteria treatment basis

For dispersed subsurface irrigation, the commission's intention with the design criteria is to protect the subsurface irrigation system from failure. The commission anticipates that without filtration, graywater irrigation systems would fail in a similar manner to an OWTS soil treatment area. Therefore, the commission is requiring filtration prior to the irrigation distribution system to inhibit failure of the emitter systems by particulate or bio-growth clogging. Irrigation system failure will result in surfacing graywater, unequal distribution, and discharge to groundwater.

For subsurface irrigation mulch basin systems, the commission's intention is to ensure that the mulch basin has an adequate volume for surge events and that the soil is capable of adsorption of any excess graywater that is not utilized by the flora. Mulch basin system failure will result in clogged mulch basins, surfacing graywater, and excessive discharge to groundwater.

For indoor toilet and urinal flushing, the commission is requiring a treatment technology that will be protective of public health and will consistently treat graywater without on-going water quality testing. Graywater research indicates that graywater is to be expected to contain human pathogens. Graywater is an emerging research area and peer reviewed research regarding graywater as a potential disease vector and treatment technology impacts on human pathogens are limited. Until additional graywater research studies indicate a definite public health safety threshold, the commission selected the ANSI/NSF 350-2011 standard for indoor toilet and urinal flushing. ANSI/NSF 350 is a performance based treatment testing protocol which requires a third party review of water quality data. The ANSI/NSF 350 standard is required in the 2015 International Plumbing Code and is required by other western states that allow indoor toilet flushing with graywater. The 2013 California Plumbing Code sets ANSI/NSF 350 as the minimum water quality standards (unless the authority having jurisdiction has other water quality requirements). Oregon allows indoor use with an ANSI certified graywater standard. In addition to ANSI/NSF 350 treatment, the commission is requiring dye to visually differentiate graywater from potable water, as well as requiring a disinfectant to prevent biological growth in the graywater distribution system.

B. Flow projections

The commission is adopting graywater flow rates based on the 2012 Uniform Plumbing Code. The 2012 Uniform Plumbing Code includes daily flow estimates for water saving fixtures while the 2015 International Plumbing Code only has traditional fixture daily flow estimates. The commission received comments from local agencies indicating that the allowed occupancy rates and therefore overall flow rate projections are not very conservative. The commission determined that if graywater is produced at graywater treatment works designed with a storage tank at a rate higher than the estimates, that any excess graywater will overflow to a combined sewer system. Excess graywater production will not impact the graywater treatment works flow (after the storage tank) for graywater use and the overall flow to the closed sewerage system from the facility will not be impacted.

For mulch basin systems without a storage tank, excess graywater production may have a more direct impact. A mulch basin without a storage tank, which is sized for surge events at three times the daily production volume, provides some safety factor for additional daily flow. The local implementing agencies will have the flexibility to adopt more conservative flow rates. For multi-family residential systems, this flow projection design criteria allows flexibility if site specific flow information is available. The residential flow values are intended for circumstances where site specific fixture information is unknown.

C. General graywater treatment works design criteria

The commission is adopting general design criteria for all graywater treatment works including: component sizing requirements, a graywater diversion valve, no bypass lines around the treatment works, and labeling. Treatment works components must be sized to treat the anticipated peak flow rate. For example: an improperly sized filter upstream of a storage tank may result in graywater backing up into the building's plumbing system. The diversion valve is a critical component for the graywater user to allow graywater to be sent to the closed sewerage system during non-irrigation periods, divert graywater when cleaning the tank, divert graywater when hazardous chemical are being used in the building, etc. The diversion valve is intended to direct graywater prior to the graywater treatment works to a closed sewerage system. No bypass lines around the graywater treatment works prior to use is allowed. The graywater lines must also be clearly distinguished to guarantee that the graywater piping is not mistaken for potable water piping. This requirement is intended to be consistent with the anticipated Colorado Plumbing Code requirements but will apply to all graywater piping, including piping outside the structure.

This regulation is consistent with the requirements for onsite wastewater treatment facilities with respect to: the impact of a graywater system on the onsite wastewater treatment facility sizing, floodplain, and floodway requirements. The onsite wastewater treatment system must be sized for the potentially full wastewater treatment flow from the facility in the event that future property owners elect to discontinue use of the graywater treatment works.

The commission determined that a storage tank is required for all graywater treatment works, except for properly sized mulch basin systems. Tanks equalize flow surges and minimize water quality variations through the day. Tanks also allow graywater application to be controlled to ensure agronomic rate control. If excess graywater is produced (over the agronomic rate), the excess graywater will be sent to the closed sewerage system via the overflow line rather than being disposed of in the subsurface irrigation system. Tanks can be used as a collection reservoir for a pressurized graywater distribution system which will allow for equal distribution of graywater throughout graywater piping. For indoor tanks, the Colorado Plumbing code may be more restrictive than the requirements in this regulation, but the design criteria adopted here set minimum standards for water quality needs. The required tank appurtenances are important design features necessary for maintaining the required control measures. Design criteria were included for tank materials, access openings, vents, overflow lines, drains, tank foundation, and signage. A minimum tank volume of 50 gallons was adopted based on the 2012 Uniform Plumbing Code. Outdoor tanks must be protected from direct sunlight to limit biological growth prior to use of stored water.

Some graywater treatment works will produce backwash waste streams. The backwash waste stream must be properly contained or disposed. An example of a graywater treatment works with a produced wastewater stream would be a filter with a backwash process. Any wastewater from the treatment process must be sent to an appropriate disposal location such as a closed sewerage system or an approved Underground Injection Control well.

Graywater treatment works must be located within the confines of the legal property boundary and not within an easement.

D. Additional design criteria for Categories A and B

In order to ensure the integrity of the irrigation system, the commission is requiring a filter. The filter must be located between the treatment system and the irrigation distribution system to inhibit failure of the soil or emitter systems by particulate clogging. A 60 mesh filter was determined to be the appropriate minimum size for protection of the irrigation system. However, the irrigation system manufacturer may recommend smaller filter sizes based on the selected graywater irrigation system components. Local governments can be more stringent and require designers to follow the manufacturer's recommendations. Prefiltration is not required but is recommended to reduce maintenance on the 60 mesh filter. The filter must be located between the tank and the

irrigation area. To prevent pump failure, the filter must be located after the pump and not on the suction side of the pump.

For mulch basin systems, the commission's aim was to not require a filter and to allow for simple graywater systems. It is anticipated that the mulch and underlying soil will act similar to a trickling filter and will provide some treatment of graywater that is not used by the flora.

E. Back up potable water system requirements for Categories A, B, C, and D

The commission is adopting different cross-connection control requirements for a graywater system served by a public water system (as defined in Regulation #11) than for graywater systems served by a non-public water system. The commission believes that installation of control devices is critical at all graywater treatment works with potable water connections. However, the commission does not want to require annual device testing for non-public water system users and customers (e.g., a single family house on an individual private well) that would not be required under the commission's existing regulations. The cross connection control requirements for public water systems are well defined in Regulation #11 and therefore this regulation does not repeat the associated requirements. For urinal and toilet flushing users, potable water supply is required for sanitary purposes since toilets and urinals must have a water supply at all times. For subsurface irrigation users, a potable water supply is optional.

F. Signage requirements for non-single family users

The regulation requires signage for public notification. The signage requirement is for non-single family users since the building occupants and visitors are less likely to be aware that a graywater treatment works is in use than at a single family residence. The required signage is for general notification and is a component of the required control measures. For non-single family users, signs are required at three locations: 1) point of graywater production (e.g., sink), 2) location of the graywater treatment works, and 3) point of graywater use (e.g., irrigation area, toilet). At the point of production, the purpose of the sign is to notify building occupants or visitors that the water is being reused and to ensure that the graywater is not being inadvertently contaminated. At the location of the graywater treatment works, the purpose of the sign is to notify occupants and building maintenance personnel in order to prevent accidental exposure to graywater. At the point of use, the purpose of the sign is to notify the persons using the irrigation area, toilet, or urinal.

G. ANSI/NSF 350 standard certified treatment for Category C and D systems

NSF/ANSI 350-2011 is a performance based water quality standard developed by the NSF Joint Committee on Wastewater Technology in 2011 for residential and commercial graywater treatment for indoor toilet and urinal flushing. The standard sets the minimum design, material, design and construction, and performance requirements for on-site residential and commercial graywater treatment systems. Technologies are tested under normal operating conditions and stress conditions and water quality results are verified by a third party certification agency. The standard does not specify the treatment technologies used to meet the water quality standard which gives flexibility of various treatment technologies to get certified. The commission finds that the ANSI/NSF standard meets an acceptable technology review protocol that would be certified by a third party agency to simplify the technology review process for the local jurisdictions. In addition, ANSI/NSF is a nationally recognized standard that is intended to be protective of public health and would consistently treat graywater without the need for on-going water quality testing. As the ANSI/NSF certification standard is relatively recent only a few manufacturers have gone through the certification process. The commission anticipates that as indoor graywater use becomes more accepted, more manufacturers will certify their products. Additionally, the ANSI/NSF 350 standard has on-site performance testing and evaluation protocol for commercial systems over 1,500 gallons per day. The commission anticipates some graywater

users will use a third party testing agency to certify their graywater treatment works to the NSF/ANSI 350 standard.

H. Disinfection requirements for Category C and D systems

Graywater research indicates that graywater is to be expected to contain human pathogens; therefore, the commission considers the use of a potent disinfectant an essential part of a multi-barrier approach to protect public health. The use of a disinfectant is required if disinfection is not already part of the ANSI/NSF equipment. The disinfectant is to inhibit the growth of microorganisms, pathogens and viruses in the indoor graywater plumbing system. For non-single family systems, the commission is requiring a free chlorine residual of 0.2 mg/L to 4 mg/L to prevent regrowth of microorganism in the graywater distribution system. Non-single family users are expected to have a large potentially impacted population and a more complicated distribution system design than single family systems. To reduce the burden on single family users, systems that use non-chemical methods for disinfection are required to use a chlorine puck in the toilet or urinal.

To maintain a multi-barrier approach, the commission is requiring that the disinfection process be capable of producing free chlorine rather than total chlorine. The disinfection process for non-single family users must be capable of injecting enough chlorine to react with all reducing agents, ammonium, organics, etc present in the graywater (aka past the breakpoint chlorination point) and that free chlorine must be present. EPA documents indicate that chloramines (which are formed prior to breakpoint chlorination) are approximately 100 times less effective than free chlorine at inactivating pathogens such as *Giardia lamblia* or viruses. Therefore, the commission believes that free chlorine is a readily available and safe, potent disinfectant.

I. Professional Engineers for Category D systems

The professional engineer requirement for graywater treatment works with a design capacity greater than 2,000 gallons per day was determined to be necessary to ensure the protection of public health and the environment. The local jurisdiction may elect to make designer requirements more stringent in their graywater control program.

XI. Irrigation System Design Criteria

A. General design criteria basis

The irrigation design requirements in this regulation are modeled after the State of Washington's graywater regulation (Chapter 246-274 WAC). Washington requires that graywater be applied directly to the plant root zone. The requirement that irrigation systems be located four (4) inches below ground rather than two (2) inches results in less potential graywater surfacing or accidental breakage incidents. The commission wants to be in general conformance with the required set back distance requirements.

The requirements adopted for single family dispersed subsurface irrigation systems are intended to prevent undersizing of the subsurface irrigation area while making the application process straightforward. For non-single family dispersed subsurface irrigation systems and mulch basin systems, the commission's intent was to adequately size the irrigation system using the best information available including site specific soil testing.

B. Irrigation system requirements for Single Family irrigation system

The intention with the dispersed subsurface irrigation systems area sizing was to have a reasonable and simple calculation for single family systems. The commission believes this equation is the simplest and most economical method to estimate the landscape area for small

graywater systems. The equation is used by other state agencies (e.g., Idaho, Washington) and designers (e.g., Oasis Design). Furthermore, this method does not require soils testing at each single family residential site. Local jurisdictions that are not comfortable without soils testing results may elect to require the mulch bed or Category B requirements for the single family dispersed subsurface irrigation systems.

C. Irrigation system requirements for Mulch Basin and Non-Single Family dispersed subsurface irrigation systems

The commission modeled the Category B and mulch basin irrigation design requirements on the State of Washington's graywater regulation (Chapter 246-274 WAC). The Washington soil type table was merged with the soil type descriptions in Regulation #43 for ease of local implementation and for consistency between commission regulations. The soil depths are not the same as the Regulation #43 requirements since Regulation #43 is intended for onsite wastewater treatment while this regulation is intended for graywater use by flora. Although intended for use by flora, the mulch basin system design criteria recognize that disposal to groundwater may result. This recognition is the basis for requiring a site and soil evaluation for all mulch basin systems, even single family systems. The site and soil evaluation requirement aims to provide site specific conditions design parameters to allow proper design for category B and mulch basin systems.

Mulch basin design requirements in other western states were researched, and detailed mulch basin design parameters were not found. Therefore the commission's goal for the mulch basin design criteria was to have sufficient volume to adsorb graywater volume surges for graywater treatment works. For graywater treatment works that do not have a storage tank the volume requirements are to capture a surge volume three (3) times the daily flow. For graywater treatment works with a storage tank the volume requirement has a safety factor of 1.5 times the daily flow. The purposes of the other mulch basin design criteria are for proper operation and to minimize potential human exposure.

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Tracking number: 2014-01249

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

Water Quality Control Commission (1002 Series)

on 05/11/2015

5 CCR 1002-86

Graywater Control Regulation

The above-referenced rules were submitted to this office on 05/11/2015 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.

May 21, 2015 09:16:18

Frederick R. Yarger

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

Permanent Rules Adopted

Department

Department of Public Health and Environment

Agency

Hazardous Materials and Waste Management Division

CCR number

6 CCR 1007-2

Rule title

6 CCR 1007-2 SOLID WASTE REGULATIONS 1 - eff 06/30/2015

Effective date

06/30/2015

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

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

6 CCR 1007-2

PART 1 - REGULATIONS PERTAINING TO SOLID WASTE SITES AND FACILITIES

Addition of Section 1.7.7 Regulations (Paint Stewardship Program Fees) and the Associated Additions to Section 1.2 Definitions

(Adopted by the Solid and Hazardous Waste Commission on May 19, 2015)

1) Revise Section 1.2 by adding the following definitions in alphabetical order to read as follows:

1.2 Definitions

*****

"Architectural paint" means an interior or exterior architectural coating sold in a container of five gallons or less.

*****

"Paint producer" means an original producer of architectural paint that sells, offers for sale, or distributes architectural paint within or into Colorado under either the producer's own name or a brand that the producer manufactures.

*****

"Paint stewardship organization" means a corporation, nonprofit organization, or other legal entity created or contracted by one or more producers to implement a paint stewardship program.

*****

"Paint stewardship program" means a program created in accordance with Section 25-17-405 C.R.S.

*****

2) Add Section 1.7.7 (Paint Stewardship Program Fees) to read as follows:

1.7.7 Paint Stewardship Program Fees

(A) **Authorization**: The Department is authorized per Section 25-17-404 (4), C.R.S. and Section 25-17-408, C.R.S. as amended, to collect fees for oversight of the paint stewardship program.

(B) **Applicability**: A paint stewardship organization or one or more paint producers as defined in Section 1.2 of the regulations shall pay to the Department an annual fee of $120,000 on or before July 1, 2015 and annually on or before July 1 of each calendar year thereafter for the paint stewardship program plan fee, revised plan fee and paint stewardship annual report fee.

1. From within the paint stewardship program plan fee, revised plan fee; and paint stewardship annual report fee total, $9,108 or as much as necessary will be appropriated to the Department of Law for the purchase of legal services.

2. The annual fee shall be prorated if there is more than one paint stewardship organizations or paint producers by the number of approved plans.

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Hazardous Materials and Waste Management Division

on 05/19/2015

6 CCR 1007-2

SOLID WASTE REGULATIONS

The above-referenced rules were submitted to this office on 05/20/2015 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.

May 27, 2015 15:44:57

Cynthia H. Coffman
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by Frederick R. Yarger
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Permanent Rules Adopted

Department

Department of Public Health and Environment

Agency

Hazardous Materials and Waste Management Division

CCR number

6 CCR 1007-3

Rule title

6 CCR 1007-3 HAZARDOUS WASTE 1 - eff 06/30/2015

Effective date

06/30/2015

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

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

6 CCR 1007-3

HAZARDOUS WASTE

Amendment of § 261.23 Characteristic of reactivity.

(Adopted by the Solid and Hazardous Waste Commission on May 19, 2015)

1) Revise paragraph (a)(8) of § 261.23 to read as follows:

§ 261.23 Characteristic of reactivity.

(a) A solid waste exhibits the characteristic of reactivity if a representative sample of the waste has any of the following properties:

****

(8) It is a forbidden explosive as defined in 49 CFR § 173.54, or is a Division 1.1, 1.2, or 1.3 explosive as defined in 49 CFR § 173.50 and § 173.53.

****

2) Add Section 8.84 {Statement of Basis and Purpose for the Rulemaking Hearing of May 19, 2015} to Part 8 of the Regulations to read as follows:

Statement of Basis and Purpose
Rulemaking Hearing of May 19, 2015

8.84 Basis and Purpose.

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

Amendment of § 261.23 Characteristic of reactivity.

This amendment revises paragraph (a)(8) of § 261.23 (Characteristic of reactivity) of the Colorado Hazardous Waste Regulations (6 CCR 1007-3) to add a cross-reference to the U.S. Department of Transportation (DOT) regulations at 49 CFR § 173.53 (Provisions for using old classifications of explosives). The Section 173.53 regulations includes the following table that may be used to compare old and new hazard class names where the classification system in effect prior to January 1, 1991 is referenced in State or local laws, ordinance or regulations not pertaining to the transportation of hazardous materials:

Current Classification	Class name prior to Jan. 1, 1991
Division 1.1……	Class A explosives.
Division 1.2……	Class A or Class B explosives.
Division 1.3……	Class B explosives.
Division 1.4……	Class C explosives.
Division 1.5……	Blasting agents.
Division 1.6……	No applicable hazardous class.

This Basis and Purpose incorporates by reference the applicable portions of the preamble language for Section 261.23 of the EPA regulations as published in the Federal Register at 75 FR 12993, March 18, 2010.

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Hazardous Materials and Waste Management Division

on 05/19/2015

6 CCR 1007-3

HAZARDOUS WASTE

The above-referenced rules were submitted to this office on 05/20/2015 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.

May 27, 2015 16:12:42

Frederick R. Yarger

Cynthia H. Coffman
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Permanent Rules Adopted

Department

Department of Public Health and Environment

Agency

Hazardous Materials and Waste Management Division

CCR number

6 CCR 1007-3

Rule title

6 CCR 1007-3 HAZARDOUS WASTE 1 - eff 06/30/2015

Effective date

06/30/2015

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

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

6 CCR 1007-3

HAZARDOUS WASTE

Amendment of § 6.04 Annual Commission Fee

(Adopted by the Solid and Hazardous Waste Commission on May 19, 2015)

1) Revise paragraph (a) of Section 6.04 to read as follows:

§ 6.04 Annual Commission Fee.

(a) For fiscal year 2015-2016 the following fees shall be assessed:

(1) Small quantity generators $65;

(2) Large quantity generators $210;

(3) Transporters $70;

(4) Non-commercial treatment, storage or disposal facilities $400; and

(5) Commercial treatment, storage or disposal facilities $600

*****

2) Add Section 8.84 {Statement of Basis and Purpose for the Rulemaking Hearing of May 19, 2015} to Part 8 of the Regulations to read as follows:

Statement of Basis and Purpose
Rulemaking Hearing of May 19, 2015

8.84 Basis and Purpose.

This amendment to 6 CCR 1007-3, Part 6 is made pursuant to the authority granted to the Solid and Hazardous Waste Commission in § 25-15-314(1), C.R.S.

Amendment of § 6.04 Annual Commission Fee

Section 6.04 of the Colorado Hazardous Waste Regulations (6 CCR 1007-3) is being amended at this time by revising paragraph (a) to reflect the annual Commission fee to be assessed for fiscal year 2015-2016.

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Hazardous Materials and Waste Management Division

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6 CCR 1007-3

HAZARDOUS WASTE

The above-referenced rules were submitted to this office on 05/20/2015 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.

May 27, 2015 16:12:20

Cynthia H. Coffman
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Permanent Rules Adopted

Department

Department of Public Health and Environment

Agency

Hazardous Materials and Waste Management Division

CCR number

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6 CCR 1007-3 HAZARDOUS WASTE 1 - eff 06/30/2015

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DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

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

6 CCR 1007-3

HAZARDOUS WASTE

Amendment of § 261.21 Characteristic of ignitability.

(Adopted by the Solid and Hazardous Waste Commission on May 19, 2015)

1) Revise § 261.21 to read as follows:

§ 261.21 Characteristic of ignitability.

(a) A solid waste exhibits the characteristic of ignitability if a representative sample of the waste has any of the following properties:

(1) *******

(2) *******

(3) It is an ignitable compressed gas.

(i) The term “compressed gas” shall designate any material or mixture having in the container an absolute pressure exceeding 40 p.s.i. at 70ºF or, regardless of the pressure at 70ºF, having an absolute pressure exceeding 104 p.s.i. at 130ºF; or any liquid flammable material having a vapor pressure exceeding 40 p.s.i. absolute at 100ºF as determined by ASTM Test D-323.

(ii) A compressed gas shall be characterized as ignitable if any one of the following occurs:

(A) Either a mixture of 13 percent or less (by volume) with air forms a flammable mixture or the flammable range with air is wider than 12 percent regardless of the lower limit. These limits shall be determined at atmospheric temperature and pressure. The method of sampling and test procedure shall be acceptable to the Bureau of Explosives and approved by the director, Pipeline and Hazardous Materials Technology, U.S. Department of Transportation (see Note 2).

(B) Using the Bureau of Explosives' Flame Projection Apparatus (see Note 1), the flame projects more than 18 inches beyond the ignition source with valve opened fully, or, the flame flashes back and burns at the valve with any degree of valve opening.

(C) Using the Bureau of Explosives' Open Drum Apparatus (see Note 1), there is any significant propagation of flame away from the ignition source.

(D) Using the Bureau of Explosives' Closed Drum Apparatus (see Note 1), there is any explosion of the vapor-air mixture in the drum.

(4) It is an oxidizer. An oxidizer for the purpose of this subchapter is a substance such as a chlorate, permanganate, inorganic peroxide, or a nitrate, that yields oxygen readily to stimulate the combustion of organic matter (see Note 4).

(i) An organic compound containing the bivalent -O-O- structure and which may be considered a derivative of hydrogen peroxide where one or more of the hydrogen atoms have been replaced by organic radicals must be classed as an organic peroxide unless:

(A) The material meets the definition of a Class A explosive or a Class B explosive, as defined in § 261.23(a)(8), in which case it must be classed as an explosive,

(B) The material is forbidden to be offered for transportation according to 49 CFR 172.101 and 49 CFR 173.21,

(C) It is determined that the predominant hazard of the material containing an organic peroxide is other than that of an organic peroxide, or

(D) According to data on file with the Pipeline and Hazardous Materials Safety Administration in the U.S. Department of Transportation (see Note 3), it has been determined that the material does not present a hazard in transportation.

(b) A solid waste that exhibits the characteristic of ignitability has the EPA Hazardous Waste Number of D001.

Note 1: A description of the Bureau of Explosives' Flame Projection Apparatus, Open Drum Apparatus, Closed Drum Apparatus, and method of tests may be procured from the Bureau of Explosives.

Note 2: As part of a U.S. Department of Transportation (DOT) reorganization, the Office of Hazardous Materials Technology (OHMT), which was the office listed in the 1980 publication of 49 CFR 173.300 for the purposes of approving sampling and test procedures for a flammable gas, ceased operations on February 20, 2005. OHMT programs have moved to the Pipeline and Hazardous Materials Safety Administration (PHMSA) in the DOT.

Note 3: As part of a U.S. Department of Transportation (DOT) reorganization, the Research and Special Programs Administration (RSPA), which was the office listed in the 1980 publication of 49 CFR 173.151a for the purposes of determining that a material does not present a hazard in transport, ceased operations on February 20, 2005. RSPA programs have moved to the Pipeline and Hazardous Materials Safety Administration (PHMSA) in the DOT.

Note 4: The DOT regulatory definition of an oxidizer was contained in § 173.151 of 49 CFR, and the definition of an organic peroxide was contained in paragraph 173.151a. An organic peroxide is a type of oxidizer.

2) Add Section 8.84 {Statement of Basis and Purpose for the Rulemaking Hearing of May 19, 2015} to Part 8 of the Regulations to read as follows:

Statement of Basis and Purpose
Rulemaking Hearing of May 19, 2015

8.84 Basis and Purpose.

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

Amendment of § 261.21 Characteristic of ignitability.

These amendments to § 261.21 of the Colorado Hazardous Waste Regulations (6 CCR 1007-3) replace the obsolete references to the DOT regulations contained in the definitions for an ignitable compressed gas (§ 261.21(a)(3)) and an oxidizer (§ 261.21(a)(4)), with the actual language from the referenced sections of the DOT regulations that was published in Title 49 of the CFR at the time of the finalization of the RCRA regulations (1980). Because it can be difficult to obtain copies of the CFR from 1980, these amendments will make it easier for the regulated community to find and apply the definitions of ignitable compressed gas and oxidizer for the purposes of § 261.21. The implementation and enforcement of the ignitability characteristic will not change in any way. The Division is simply publishing the original definitions to ease the burden on the regulated community.

This Basis and Purpose incorporates by reference the applicable portions of the preamble language for Section 261.21 of the EPA regulations as published in the Federal Register at 71 FR 40254-40255, July 14, 2006.

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

Hazardous Materials and Waste Management Division

on 05/19/2015

6 CCR 1007-3

HAZARDOUS WASTE

The above-referenced rules were submitted to this office on 05/20/2015 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.

May 27, 2015 16:12:56

Cynthia H. Coffman
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Solicitor General

Permanent Rules Adopted

Department

Department of Labor and Employment

Agency

Division of Workers' Compensation

CCR number

7 CCR 1101-3

Rule title

7 CCR 1101-3 WORKERS' COMPENSATION RULES OF PROCEDURE WITH TREATMENT GUIDELINES 1 - eff 07/01/2015

Effective date

07/01/2015

DEPARTMENT OF LABOR AND EMPLOYMENT

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

Rule 2 Workers' Compensation Premium Surcharges

2-5 SURCHARGE RATE

(A) For the annual period beginning July 1, 2015 and continuing indefinitely with annual review by the Director, the workers' compensation cash fund premium surcharge rate authorized under §8-44-112(1)(a), C.R.S., shall be 0.5 percent of the amount of all premiums written, including any policy expense constants, membership fees, finance and service, or other administrative fees charged to the policyholder in connection with the issuance or renewal of a policy, as reported to the Division of Insurance in accordance with §10-3-208, C.R.S., and regulations promulgated thereunder, or the premium equivalent amount established in section 2-3 of this rule, for Colorado workers' compensation insurance during the period of January 1, 2015 continuing indefinitely.

(B) For the purpose of funding the direct and indirect costs of the Premium Cost Containment program of the Division as authorized under §8-44-112(1)(b)(I), C.R.S., there is added to the surcharge imposed pursuant to Section 2-5 of this rule, an additional increment for the annual period beginning July 1, 2015 and continuing indefinitely with annual review by the Director, against workers' compensation insurance premiums written, including any policy expense constants, membership fees, finance and service, or other administrative fees charged to the policyholder in connection with the issuance or renewal of a policy, as reported to the Division of Insurance in accordance with §10-3-208, C.R.S., and regulations promulgated thereunder, during the period of January 1, 2015, continuing indefinitely. The amount of this assessment shall be 0.03 percent. No assessment shall be imposed upon self-insured employers under this subsection.

(C) For the purposes of funding the financial liabilities of the Subsequent Injury Fund as authorized under §8-46-102(2)(A)(I), C.R.S. And the Major Medical Fund under §8-46-202, C.R.S., for the period beginning July 1, 2015, and continuing indefinitely with annual review by the Director, the tax shall be assessed at .1 percent of the amount of Workers' Compensation premiums written, including any policy expense constants, membership fees, finance and service, or other administrative fees charged to the policyholder in connection with the issuance or renewal of a policy, as reported to the Division of Insurance in accordance with §10-3-208, C.R.S., and regulations promulgated thereunder, or the premium equivalent amount established in Section 2-3 of this rule, for Colorado Workers' Compensation insurance during the period of January 1, 2015, continuing indefinitely.

CYNTHIA H. COFFMAN
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Tracking number: 2015-00207

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

Division of Workers' Compensation

on 05/20/2015

7 CCR 1101-3

WORKERS' COMPENSATION RULES OF PROCEDURE WITH TREATMENT GUIDELINES

The above-referenced rules were submitted to this office on 05/20/2015 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.

May 28, 2015 11:02:07

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

Permanent Rules Adopted

Department

Department of Human Services

Agency

Income Maintenance (Volume 3)

CCR number

9 CCR 2503-6

Rule title

9 CCR 2503-6 COLORADO WORKS PROGRAM 1 - eff 07/01/2015

Effective date

07/01/2015

Tracking# 2015-00180
FA/P 5/8/15, eff. 7/1/15

[I:/15022601_Submittal.doc]

(9 CCR 2503-1)

[Instructions: insert the following paragraph at the end of the Statement of Basis and Purpose.]

Revisions to Sections 3.600.31, 3.601, 3.602.1, 3.604.1, 3.604.2, 3.605.2, 3.606.6, 3.606.8, 3.607.2, 3.608.1, 3.608.3, 3.608.4, and 3.609.961-3.609.962 were final adoption following publication at the 5/8/2015 State Board meeting (Rule-making# 15-2-26-1), with an effective date of 7/1/2015. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Strategic Communications and Legislative Relations, State Board Administration.

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(9 CCR 2503-6)

[Instructions: replace the following section.]

3.600.31 Private Contracting [Rev. eff. 7/1/15]

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). 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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[Instructions: replace the following title.]

3.601 PROGRAM DEFINITIONS [Rev. eff. 7/1/15]

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[Instructions: replace/insert the following definitions.]

“Employed” shall mean that an individual is considered an employee by the employer, or is self-employed.

“Good cause” shall, unless otherwise specified, mean a circumstance or circumstances beyond the participant’s control. Good cause may include, but is not limited to:

A. Death or incapacity of:

1. An applicant/recipient; or,

2. A member of his or her immediate family; or,

3. The authorized representative.

B. Physical or mental disability or illness of the participant or an individual in the participant’s care.

C. A specified caretaker being called frequently to a child’s school.

D. Required/frequent court appearances of client or child in client’s care.

E. Temporary breakdown in transportation.

F. Temporary breakdown in child care/unavailability of child care.

G. A housing crisis that might result in homelessness or eviction.

“Guardian” shall mean a person appointed by court order to be the guardian of another person.

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[Instructions: replace the following title.]

3.602.1 Applications [Rev. eff. 7/1/15]

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[Instructions: replace the following subsection.]

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.

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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[Instructions: replace the following.]

3.604.1 Program Verifications [Rev. eff. 7/1/15]

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 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 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 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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[Instructions: replace the following.]

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.

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

Interfaces are acceptable verification sources for Colorado Works.

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 a written statement provided on or with the application form that the information available through IEVS 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; and,

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 non-receipt 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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[Instructions: replace the following title.]

3.604.2 Assistance Unit [Rev. eff. 7/1/15]

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[Instructions: replace the following.]

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. Assistance units with an adult 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 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 participant or an excluded member under "Time Limits". 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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[Instructions: replace the following.]

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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[Instructions: replace the following.]

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 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 Individualized Plan (IP)

1) The county shall use only FVO-trained workers to work with victims of domestic violence throughout the application, screening, waiver/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 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, 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 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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[Instructions: replace the following title.]

3.605.2 Income [Rev. eff. 7/1/15]

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[Instructions: replace the following.]

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.

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[Instructions: replace the following.]

3.606.6 Time Limits and Extensions [Rev. eff. 7/1/15]

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 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 Individualized Plan.

D. Hardship

Hardship is defined as one or more of the following that prevents the adult member(s) of the assistance unit from securing or maintaining employment:

1. Disability of the caretaker relative, his or her spouse, the dependent child(ren) or immediate relative for whom the caretaker is the primary caregiver, pursuant to the definition of "persons with disabilities" at Section 3.604.1; or,

2. Involvement in the judicial system because a member of the assistance unit has an existing case; or,

3. Family instability which may include a caretaker with proven inability to maintain stable employment or inability of the caretaker to care for the children in his or her own home or in the home of a relative; or,

4. Inadequate or unavailable:

   a. Child care,

   b. Housing,

   c. Transportation; or,

   d. Employment opportunities.

      County departments shall include additional criteria for Item "d", regarding employment opportunities specific to the county. A county department may define additional reasons for granting an extension due to hardship. The detailed information and additional hardship reasons shall be defined and described in the county policies and procedures.

E. Hardship Due To Domestic Violence

Domestic violence extension may be granted when domestic violence problems, as defined at Section 3.604.2, S, prevent the adult member(s) from participating in work activities or securing employment.

F. Required Individualized Plan (IP) 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). The IP shall include the participation activities required of the participant(s) as a condition of eligibility, the extension, as well as the IP requirements at Section 3.607.2. Failure to comply with all terms and conditions of the IP 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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[Instructions: replace the following.]

3.606.8 Diversion, Supportive Services, Other Assistance, and Family Needs Payments [Rev. eff. 7/1/15]

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). The IP 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 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 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 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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[Instructions: replace the following.]

3.607.2 Individualized Plan (IP) [Rev. eff. 7/1/15]

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) 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

As a condition of eligibility, county departments shall develop an Individualized Plan (IP) with applicants/participants receiving Basic Cash Assistance (BCA) or diversion payments designed to satisfy their individual and family needs and employment goals. The initial IP 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 shall be comprehensive including matters relating to securing and maintaining training, education, or work. The initial IP for receiving diversion payments are a requirement for the receipt of such payments. The IP must at a minimum clearly outline the expectations of the county and participant. 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 the participant in developing the IP.

The IP shall be clearly written, signed and dated by the participant and the county worker shall ensure the participant understands the terms of the IP. 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 of the IP or that the 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.

B. Consequences and Conditions

All consequences and conditions associated with the IP shall be listed clearly on the IP 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 at 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 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 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 does not create a legal entitlement to benefits; and,

3. A participant's failure to comply with the IP without a determination of good cause shall result in sanctions or termination of assistance; and,

4. A participant's refusal to comply with every component outlined in the IP 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.

D. Modification Request

Either an applicant or participant or a county department may request a modification of the IP. Any modification made to the IP will result in a new IP that must be signed and dated by both the applicant/participant and the county worker, acknowledging the agreement made in the IP. The applicant or participant and county worker may initial changes made to the IP that are small in scope.

E. Extension Individualized Plan

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 an Individualized Plan. The IP shall include the participation activities and must be based on the assessment completed by the work eligible member and county worker as a condition of the extension. Failure to comply with terms and conditions of the IP 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/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. The facilitator shall be a county worker not directly involved in the initial determination or action taken on the case per county policy.

3.608 COLORADO WORKS WORKFORCE DEVELOPMENT

3.608.1 Workforce Development [Rev. eff. 7/1/15]

A. Work Eligible Individuals

The following are defined as work eligible individuals and are subject to work activities under Section 3.608.2, A, “Engaged in Work Activities,” or other county-defined work activities as determined through the participant assessment:

1. An adult or minor child head-of-household receiving assistance under TANF or a separate State program, unless excluded in 2, below.

2. A non-recipient parent living with a child receiving assistance, unless the parent is a member of one of three excluded groups:

   a. A minor parent who is not a head-of household or spouse of head-of household;

   b. An non-citizen who is ineligible to receive assistance due to his or her immigration status; or,

   c. At State option on a case-by-case basis, a recipient of supplemental Social Security Income (SSI) benefits.

3. A specified caretaker who is a member of the assistance unit and receiving a portion of the grant.

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) 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)

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 program. Such requirements must be written into a participant's IP. The participant's IP 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. 7/1/15]

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 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.”

B. Allowable Work Activities

Work activities are defined as:

1. Unsubsidized employment - Part-time or full-time employment in the public or private sector that is not subsidized by TANF or other public program.

2. Subsidized private or public sector employment - Part-time or full-time work with any private or public sector employer for which wages are paid by the employer and for which the employer receives a subsidy; from TANF or other public funds to offset some or all of the wages and costs of employing a recipient.

3. Work experience - a work activity performed in return for Colorado Works cash assistance payments, that provides an individual with an opportunity to acquire the general skills, training, knowledge and work habits necessary to obtain employment. Work experience assignments must improve the employability of those who cannot find unsubsidized employment.

4. On-The-Job-Training - training in the public or private sector that is given to a paid employee while he or she is engaged in productive work and that provides knowledge and skills essential to the full and adequate performance of the job.

5. Job search and job readiness assistance - Job search may be conducted in either a group or individual setting and may include employer contacts either in person, by telephone, or by electronic methods; job readiness assistance includes activities supporting preparation of an individual to seek or obtain employment. This includes activities such as preparing a resume or job application, training in interviewing skills, instruction in work place expectations, as well as life skills training. Substance abuse treatment, mental health treatment, or rehabilitation activities are allowed for those who are otherwise employable. Such treatment or therapy must be determined necessary and certified by a qualified medical or mental health professional.

6. Community service programs - Structured work programs performed for the direct benefit of the community under the auspices of public or non-profit organizations. Community services programs must be limited to projects that serve a useful community purpose in fields such as health, social service, environmental protection, education, urban and rural redevelopment, welfare, recreation, public facilities, public safety, and child care.

7. Vocational educational training - Organized educational programs that are directly related to the preparation of individuals for employment in current or emerging occupations requiring training.

8. Child care for community service participants - Providing child care services to an individual who is participating in a community service program. It does not include providing child care to enable a TANF recipient to participate in any of the other ten allowable work activities. Child care provided to individuals in community service must adhere to established child care licensing rules and statutes.

9. Job skills training directly related to employment - Training and education for job skills required by an employer or to advance or adapt to the changing demands of the workplace, including basic remediation, English as a Second Language, and/or short-term training directly related to local labor market demands.

10. Education directly related to employment shall be an option only in the case of a participant who has not received a high school diploma or a certificate of high school equivalency. This work activity is used for education courses designed to provide knowledge and skills for specific occupations or work settings and may include adult basic education, English as a Second Language (ESL) and education leading to a General Education Development (GED) or high school equivalency diploma.

11. Satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence shall be an option only in the case of a participant who has not completed secondary school or received such a certificate. Regular attendance, in accordance with the requirements of the secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate. This activity may not include other related educational activities, such as adult basic education or language instruction.

    a. Full-time attendance in secondary school, vocational or technical school, or cooperative training programs means twenty-five (25) clock hours per week or as defined by the school system.

    b. Part-time attendance means a minimum of twelve hours of school attendance per week, or as defined by the school system.

C. Work Activity Outlined in the Individualized Plan

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.

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[Instructions: replace the following.]

3.608.3 Work Participation Rate [Rev. eff. 7/1/15]

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. 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.

B. Job Placement Agencies

In addition to other categories of expenditures, counties may use Colorado Works funds to provide vouchers for approved job placement agencies.

C. Employment Incentives

In addition to other categories of expenditures, county departments may provide employment incentives to participants or employers as provided in a county policy.

3.608.4 Noncompliance [Rev. eff. 7/1/15]

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) 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

    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. 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; or,

    c. The applicant or participant fails to update the IP without good cause.

    Demonstrable evidence of refusal to participate is demonstrated when a participant complies with none of the IP 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 but not all, demonstrable evidence of refusal to participate is not present and a sanction may be imposed rather than denial or termination.

C. Time Limits

The time limits on the receipt of Federal TANF assistance shall continue during the first and second sanction periods.

D. Recognizing Sanctions From Other Counties

All sanctions shall be served and cured when a participant moves from one county to another. If a sanction occurred in a county of previous residence, it must be cured in the new county prior to cash assistance approval. The criteria that are used to cure such sanction can be found at Section 3.608.4, H, 8.

E. Recognizing Sanctions from Other States

Individualized Plan sanctions coming from other states will not be recognized in the State of Colorado.

F. Affect of a Colorado Works Sanction on Food Assistance and Medicaid

Sanctions imposed shall not adversely affect the participant's eligibility to receive Medicaid or Food Assistance beyond what is allowable under federal and state law.

G. County Department Good Cause Policy

Counties shall set forth in county policy with guidance from the State good cause for not imposing sanction(s).

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 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 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

For the purpose of this section, revisions to the Individualized Plan (IP) means that once an IP is negotiated, agreed upon and signed by both the participant and county worker that 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, the participant and the county worker revise the IP for any reason, the prior IP is void. The new IP 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. If a new IP is the result of a "good cause" conciliation meeting, the content of the new IP and not any prior IP and/or activities associated with a prior IP 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. 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 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. 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. 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, 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, and is scheduled to attend work activities as outlined in the IP, the sanction/case closure shall not be initiated as long as the participant continues successfully in implementing the IP through the Good Cause Conciliation period.

d) The Good Cause Conciliation period, as outlined in 3.608.4, H, 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.

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, 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 and is scheduled to attend work activity and/or county defined work activities as outlined in the IP.

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.

J. Appeal of a Sanction or Case Closure

A recipient of Colorado Works has the right to appeal the county department’s action to sanction or close a case. The applicant can utilize the local level dispute resolution process and/or a state level hearing per Section 3.609.9. The appeal period for proposed sanctions for Colorado Works begins with the mailing of a notice of proposed action, listing the proposed action and the individual's appeal rights.

A notice of proposed action shall not be issued by the county department for proposed Colorado Works sanctions/case closure until the Good Cause Conciliation period has been completed.

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[Instructions: replace the following.]

3.609.961 Optional Noncustodial Parent Programs [Rev. eff. 7/1/15]

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 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 [Rev. eff. 7/1/15]

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 program and incorporate those requirements into a participant's Individualized Plan (IP). The participant's IP 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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Office of the Attorney General

Tracking number: 2015-00180

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

State Board of Human Services: #15-2-26-1 CO Works Changes Due to Audit and Appeal Findings

on 05/08/2015

9 CCR 2503-6

COLORADO WORKS PROGRAM

The above-referenced rules were submitted to this office on 05/15/2015 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.

May 26, 2015 11:38:58

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 2505-3

Rule title

10 CCR 2505-3 FINANCIAL MANAGEMENT OF THE CHILDREN'S BASIC HEALTH PLAN 1 - eff 07/01/2015

Effective date

07/01/2015

THIS PAGE NOT FOR PUBLICATION

Title of Rule:	Revision to the Child Health Plan Plus Rule Concerning Section 214 of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA), Section 110
Rule Number:	MSB 15-02-23-B
Division / Contact / Phone:	Eligibility Division / Ana Bordallo / 303-866-3558

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 15-02-23-B, Revision to the Child Health Plan Plus Rule Concerning Section 214 of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA), Section 110
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) Section 110, Colorado Department of Health Care Policy and Financing, Child Health Plan *Plus* (10 CCR 2505-3).
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 current text at §110.1.B.2 with new text provided.
Replace current text at §170.1.C with new text provided.
All text indicated in blue is for clarification purposes only and should not be changed.
This revision is effective 07/01/2015

*to be completed by MSB Board Coordinator

THIS PAGE NOT FOR PUBLICATION

Title of Rule:	Revision to the Child Health Plan Plus Rule Concerning Section 214 of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA), Section 110
Rule Number:	MSB 15-02-23-B
Division / Contact / Phone:	Eligibility Division / Ana Bordallo / 303-866-3558

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 revisions to the current policy regarding lawfully residing children who do not meet the 5-year waiting period. In 2009 Colorado House Bill 09-1353 authorized the Department to remove the 5-year waiting period for all lawfully residing children and pregnant women. Changes to the Colorado Benefits Management System (CBMS) will be made to be in alignment with federal and state regulations effective July 1, 2015.

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:

   Section 214 of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) which amends section 2107 of the Act, codified at 42 U.S.C 1396b(v)(4)(A).

4. State Authority for the Rule:

   Colorado House Bill 09-1353, codified as sections 25.5-5-101(2)(b)(II);25.5-5-201(2)(b);25.5-8-109(6).

Initial Review	**04/10/2015**	Final Adoption	**05/08/2015**
Proposed Effective Date	**07/01/2017**	Emergency Adoption	

THIS PAGE NOT FOR PUBLICATION

Title of Rule: Revision to the Child Health Plan Plus Rule Concerning Section 214 of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA), Section 110

Rule Number: MSB 15-02-23-B

Division / Contact / Phone: Eligibility Division / Ana Bordallo / 303-866-3558

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 children and pregnant women who are lawfully residing and who have not met the 5-year waiting period. The proposed rule will benefit these children and pregnant women by eliminating the 5-year waiting period and making them eligible for CHP+, as long as all other eligibility criteria are met.

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 allow lawfully residing children and pregnant women who have not met the 5-year waiting period to be eligible for CHP+.

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.

   Eliminating the 5-year waiting period for children and pregnant women that are lawfully residing in the United States for less than 5 years will increase the State's expenditure as this change will expand eligibility for CHP+. See tables for details on cost estimates. This rule needs to be implemented for CHP+ children and pregnant women.

CHP+ Expenditures		
	FFY 2014-15	FFY 2015-16
CHP+ Children	236	1,082
Medical Per Capita	$170.86	$172.27
Dental Per Capita	$19.05	$19.36
CHP+Children's Expenditure	$44,819	$207,344
CHP+ Prenatal	16	71
Medical Per Capita	$1,093.51	$1,107.27
CHP+ Prenatal Expenditure	$17,496	$78,616
Total Expenditure	$62,315	$285,960
State Share	$21,368	$32,886
Federal Share	$40,947	$253,074

4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

   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 approved under HB 09-1353 and was partially implemented. Currently Colorado provides 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 HB 09-1353. Inaction would leave 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.

5. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

   There is not a less costly method to achieve the purpose of this proposed rule

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 the Department considered.

110 INDIVIDUALS ASSISTED UNDER THE PROGRAM

110.1 To be eligible for the Children's Basic Health Plan, an eligible person shall:

A.

1. Be less than 19 years of age; or

2. Be a pregnant woman

B. Meet one of the following categories:

1. A citizen or national of the United States, the District of Columbia, Puerto Rico, Guam, the United States Virgin Islands, the Northern Mariana Islands, American Samoa, or Swain's Island; or

2. An alien or immigrant who entered the United States and who is:

a. Lawfully admitted for permanent residence under the U.S. Immigration and Nationality Act; or

b. Paroled into the United States for at least one year under Section 212(d)(5) of the U.S. Immigration and Nationality Act; or

c. Granted conditional entry under Section 203(a)(7) of the U.S. Immigration and Nationality Act; or

170 PRESUMPTIVE ELIGIBILITY

170.1 An eligible person may apply for presumptive eligibility for immediate temporary medical services through designated presumptive eligibility sites.

A. To be eligible for presumptive eligibility, an applicant household's declared income shall be greater than 133% but not exceed 250% of federal poverty level for children under the age of 19; or

B. To be eligible for presumptive eligibility, an applicant household's declared income shall be greater than 185% but not exceed 250% of the federal poverty level for pregnant women; and

C. He/she shall be a United States citizen or a documented immigrant..

170.2 Presumptive eligibility sites shall be certified by the Department of Health Care Policy and Financing to make presumptive eligibility determinations. Sites shall be re-certified by the Department of Health Care Policy and Financing every 2 years to remain approved presumptive eligibility sites.

A. The presumptive eligibility sites shall attempt to obtain all necessary documentation to complete the application within ten business days of application.

B. The presumptive eligibility site shall forward the application to the county within five business days of being completed. If the application is not completed within ten business days, on the eleventh business day following application, the presumptive eligibility sites shall forward the application to the appropriate county.

170.3 The presumptive eligibility period will be no less than 45 days. The presumptive eligibility period will end on the last day of the month following the completion of the 45 day presumptive eligibility period.

170.4 The county or medical assistance site shall make an eligibility determination within 45 days from the date of application. The effective date of eligibility will be the date of application.

A. Presumptively eligible clients may appeal the county or medical assistance site's failure to act on an application within 45 days from date of application or the denial of an application. Appeal procedures are outlined in Section 600.

B. A presumptively eligible client may not appeal the end of a presumptive eligibility period.

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Tracking number: 2015-00184

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 05/08/2015

10 CCR 2505-3

FINANCIAL MANAGEMENT OF THE CHILDREN'S BASIC HEALTH PLAN

The above-referenced rules were submitted to this office on 05/08/2015 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.

May 21, 2015 16:46:22

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 07/01/2015

Effective date

07/01/2015

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 15-02-23-A, Revision to the Medical Assistance Eligibility Rules Concerning Section 214 of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) at section 8.100.4.G.2
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.2, 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 current text at the unnumbered paragraph in §8.100.1 Definitions that begins "Legal Immigrant is an individual who" with new text provided.
Replace current text at §8.100.4.G.2.b with new text provided.
Replace current text at §8.100.4.G.6 and 7 with new text provided at §8.100.4.G.5.a and 6.
Replace current text at §8.100.4.F.2.b with the new text provided.
All text indicated in blue is for clarification purposes only and should not be changed.
This revision is effective 07/01/2015.

*to be completed by MSB Board Coordinator

Title of Rule:	Revision to the Medical Assistance Eligibility Rules Concerning Section 214 of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) at section 8.100.4.G.2
Rule Number:	MSB 15-02-23-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 revisions to the current policy regarding lawfully residing children who do not meet the 5-year waiting period. In 2009 Colorado House Bill 09-1353 authorized the Department to remove the 5-year waiting period for all lawfully residing children and pregnant women. Also as part of this revision the definition for "Legal Immigrant" and Legal Prenatal will be updated. Changes to the Colorado Benefits Management System (CBMS) will be made to be in alignment with federal and state regulations effective July 1, 2015.

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:

   Section 214 of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) which amends section 2107 of the Act, codified at 42 U.S.C 1396b(v)(4)(A).

4. State Authority for the Rule:

   25.5-1-301 through 25.5-1-303, C.R.S. (2014);
   Colorado House Bill 09-1353,codified as sections 25.5-5-101(2)(b)(II);25.5-5-201(2)(b);25.5-8-109(6)

Initial Review	**04/10/2015**	Final Adoption	**05/08/2015**
Proposed Effective Date	**07/01/2015**	Emergency Adoption	

Title of Rule:	Revision to the Medical Assistance Eligibility Rules Concerning Section 214 of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) at section 8.100.4.G.2
Rule Number:	MSB 15-02-23-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 children who are lawfully residing and who have not met 5-year waiting period. The proposed rule will benefit these children by eliminating the 5-year waiting period and making them eligible for Medicaid, as long as all other eligibilitycriteria are met.

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 allow lawfully residing children who have not met the 5-year waiting period to 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.

   Eliminating the 5-year waiting period for children that are lawfully residing in the United States for less than 5 years will increase the State's expenditure as this change will expand eligibility for Medicaid. See tables for details on cost estimates. The 5-year waiting period has already been removed for Medicaid eligible pregnant women, this rule needs to be implemented for Medicaid eligible children.

Medicaid Expenditures		
	FFY 2014-15	FFY 2015-16
MAGI Eligible Children	380	1,719
Medical Per Capita	$1,756.32	$1,745.21
BH Per Capita	$236.24	$238.75
MAGI Eligible Children Expenditure	$757,173	$3,410,427
SB 11-008 Eligible Children	45	206
Medical Per Capita	$1,516.86	$1,507.80
BH Per Capita	$236.24	$238.75
SB 11-008 Eligible Children Expenditure	$78,890	$359,789
Total Expenditure	$836,063	$3,770,216
State Share	$400,187	$1,722,035
Federal Share	$435,876	$2,048,181

4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

   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 approved under HB 09-1353 and was partially implemented. Currently Colorado provides 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 HB 09-1353. Inaction would leave Medicaid eligible children who have been lawfully residing in the United States for less than 5 years without medical assistance.

5. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

   There is not a less costly method to achieve the purpose of this proposed rule.

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 the Department considered.

8.100.1 Definitions

300% Institutionalized Special Income Group is a Medical Assistance category that provides Long-Term Care Services to aged or disabled individuals.

1619b is section 1619b of the Social Security Act which allows individuals who are eligible for Supplemental Security Income (SSI) to continue to be eligible for Medical Assistance coverage after they return to work.

AB - Aid to the Blind is a program which provides financial assistance to low-income blind persons.

ABD - Aged, Blind and Disabled Medical Assistance is a group of Medical Assistance categories for individuals that have been deemed to be aged, blind, or disabled by the Social Security Administration or the Department.

Adult MAGI Medical Assistance group provides Medical Assistance to eligible adults from the age of 19 through the end of the month that the individual turns 65, who do not receive or who are ineligible for Medicare.

AND - Aid to Needy Disabled is a program which provides financial assistance to low-income persons over age 18 who have a total disability which is expected to last six months or longer and prevents them from working.

AFDC - Aid to Families with Dependent Children is the Title IV federal assistance program in effect from 1935 to 1997 which was administered by the United States Department of Health and Human Services. This program provided financial assistance to children whose families had low or no income.

AP-5615 is the form used to determine the patient payment for clients in nursing facilities receiving Long Term Care.

Alien is a person who was not born in the United States and who is not a naturalized citizen.

Ambulatory Services is any medical care delivered on an outpatient basis.

Annuity is an investment vehicle whereby an individual establishes a right to receive fixed periodic payments, either for life or a term of years.

Applicant is an individual who is seeking an eligibility determination for Medical Assistance through the submission of an application.

Application Date is the date the application is received and date-stamped by the eligibility site or the date the application was received and date-stamped by an Application Assistance site or Presumptive Eligibility site. In the absence of a date-stamp, the application date is the date that the application was signed by the client.

Application for Public Assistance is the designated application used to determine eligibility for financial assistance. It can also be used to determine eligibility for Medical Assistance.

Blindness is defined in this volume as the total lack of vision or vision in the better eye of 20/200 or less with the use of a correcting lens and/or tunnel vision to the extent that the field of vision is no greater than 20 degrees.

Burial Spaces are burial plots, gravesites, crypts, mausoleums, urns, niches and other customary and traditional repositories for the deceased's bodily remains provided such spaces are owned by the

individual or are held for his or her use, including necessary and reasonable improvements or additions to or upon such burial spaces such as: vaults, headstones, markers, plaques, or burial containers and arrangements for opening and closing the gravesite for burial of the deceased.

Burial Trusts are irrevocable pre-need funeral agreements with a funeral director or other entity to meet the expenses associated with burial for Medical Assistance applicants/recipients. The agreement can include burial spaces as well as the services of the funeral director.

Caretaker Relative is any relation by blood, marriage or adoption who is within the fifth degree of kinship to the dependent child, such as: a parent; a brother, sister, uncle, aunt, first cousin, first cousin once removed, nephew, niece, or persons of preceding generations denoted by prefixes of grand, great, great great, or great-great-great; a spouse of any person included in the above groups even after the marriage is terminated by death or divorce; or stepparent, stepbrother, stepsister, step-aunt, etc.

Case management services are services provided by community mental health centers, clinics, community centered boards, and EPSDT case managers to assist in providing services to Medical Assistance clients in gaining access to needed medical, social, educational and other services.

Cash surrender value is the amount the insurer will pay to the owner upon cancellation of the policy before the death of the insured or before maturity of the policy.

Categorically eligible means persons who are eligible for Medical Assistance due to their eligibility for one or more Federal categories of public assistance.

CBMS - Colorado Benefits Management System is the computer system that determines an applicant's eligibility for public assistance in the state of Colorado.

CDHS -Colorado Department of Human Services is the state department responsible for administering the social service and financial assistance programs for Colorado.

Children MAGI Medical Assistance group provides Medical Assistance coverage to tax dependents or otherwise eligible applicants through the end of the month that the individual turns 19 years old.

Child Support Services is a CDHS program that assures that all children receive financial and medical support from each parent. This is accomplished by locating each parent, establishing paternity and support obligations, and enforcing those obligations.

Citizen is a person who was born in the United States or who has been naturalized.

Client is a person who is eligible for the Medical Assistance Program. "Client" is used interchangeably with "recipient" when the person is eligible for the program.

CMS - Centers for Medicare and Medicaid Services is the Federal agency within the US Department of Health and Human Services that partners with the states to administer Medicaid and CHP+ via State Plans in effect for each State. Colorado is in Region VIII.

CHP+ - Child Health Plan Plus is low-cost health insurance for Colorado's uninsured children and pregnant women. CHP+ is public health insurance for children and pregnant women who earn too much to qualify for The Medical Assistance Program, but cannot afford private health insurance.

COLA - Cost of Living Adjustment is an annual increase in the dollar value of benefits made automatically by the United States Department of Health and Human Services or the state in OASDI, SSI and OAP cases to account for rises in the cost of living due to inflation.

Colorado State Plan is a written statement which describes the purpose, nature, and scope of the Colorado's Medical Assistance Program. The Plan is submitted to the CMS and assures that the program is administered consistently within specific requirements set forth in both the Social Security Act and the Code of Federal Regulations (CFR) in order for a state to be eligible for Federal Financial Participation (FFP).

Common Law Marriage is legally recognized as a marriage in the State of Colorado under certain circumstances even though no legally recognized marriage ceremony is performed or civil marriage contract is executed. Individuals declaring or publicly holding themselves out as a married couple through verbal or written methods may be recognized as legally married under state law. C.R.S. § 14-2-104(3).

Community Centered Boards are private non-profit organizations designated in statute as the single entry point into the long-term service and support system for persons with developmental disabilities.

Community Spouse is the spouse of an institutionalized spouse.

Community Spouse Resource Allowance is the amount of resources that the Medical Assistance regulations permit the spouse staying at home to retain.

Complete application means an application in which all questions have been answered, which is signed, and for which all required verifications have been submitted.

The Department is defined in this volume as the Colorado Department of Health Care Policy and Financing which is responsible for administering the Colorado Medical Assistance Program and Child Health Plan Plus programs as well as other State-funded health care programs.

Dependent child is defined in this volume as a child under the age of 19 residing in the home or between the ages of 18 and 19 who is a full time student in a secondary school or in the equivalent level of vocational or technical training and expected to complete the program before age 19.

Dependent relative for purposes of this rule is defined as one who is claimed as a dependent by an applicant for federal income tax purposes.

Disability means the inability to do any substantial gainful activity (or, in the case of a child, having marked and severe functional limitations) by reason of a medically determinable physical or mental impairment(s) which can be expected to result in death or which has lasted or can be expected to last for a continuous period of l2 months or more.

Dual eligible clients are Medicare beneficiaries who are also eligible for Medical Assistance.

Earned Income is defined for purposes of this volume as any compensation from participation in a business, including wages, salary, tips, commissions and bonuses.

Earned Income Disregards are the allowable deductions and exclusions subtracted from the gross earnings. Income disregards vary in amount and type, depending on the category of assistance.

Electronic data source is an interface established with a federal or state agency, commercial entity, or other data sources obtained through data sharing agreements to verify data used in determining eligibility. The active interfaces are identified in the Department's verification plan submitted to CMS.

Eligibility site is defined in this volume as a location outside of the Department that has been deemed by the Department as eligible to accept applications and determine eligibility for applicants.

Employed means that an individual has earned income and is working part time, full time or is self-employed, and has proof of employment. Volunteer or in-kind work is not considered employment.

EPSDT- Early Periodic Screening, Diagnosis and Treatment is the child health component of the Medical Assistance Program. It is required in every state and is designed to improve the health of low-income children by financing appropriate, medically necessary services and providing outreach and case management services for all eligible individuals.

Equity value is the fair market value of land or other asset less any encumbrances.

Ex Parte Review is an administrative review of eligibility during a redetermination period in lieu of performing a redetermination from the client. This administrative review is performed by verifying current information obtained from another current aid program.

Face value of a life insurance policy is the basic death benefit of the policy exclusive of dividend additions or additional amounts payable because of accidental death or other special provisions.

Fair market value is the average price a similar property will sell for on the open market to a private individual in the particular geographic area involved. Also, the price at which the property would change hands between a willing buyer and a willing seller, neither being under any pressure to buy or to sell and both having reasonable knowledge of relevant facts.

FBR - The Federal Benefit Rate is the monthly Supplemental Security Income payment amount for a single individual or a couple. The FBR is used by the Aged, Blind and Disabled Medical Assistance Programs as the eligibility income limits.

FFP - Federal Financial Participation as defined in this volume is the amount or percentage of funds provided by the Federal Government to administer the Colorado Medical Assistance Program.

FPL - Federal Poverty Level is a simplified version of the federal poverty thresholds used to determine financial eligibility for assistance programs. The thresholds are issued each year in the Federal Register by the Department of Health and Human Services (HHS).

Good Cause is the client's justification for needing additional time due to extenuating circumstances, usually used when extending deadlines for submittal of required documentation.

Good Cause for child support is the specific process and criteria that can be applied when a client is refusing to cooperate in the establishment of paternity or establishment and enforcement of a child support order due to extenuating circumstances.

HCBS are Home and Community Based Services are also referred to as "waiver programs". HCBS provides services beyond those covered by the Medical Assistance Program that enable individuals to remain in a community setting rather than being admitted to a Long-Term Care institution.

Inpatient is an individual who has been admitted to a medical institution on recommendation of a physician or dentist and who receives room, board and professional services for 24 hours or longer, or is expected to receive these services for 24 hours or longer.

Institution is an establishment that furnishes, in single or multiple facilities, food, shelter and some treatment or services to four or more persons unrelated to the proprietor.

Institutionalization is the commitment of a patient to a health care facility for treatment.

An institutionalized individual is one who is institutionalized in a medical facility, a Long-Term Care institution, or applying for or receiving Home and Community Based Services (HCBS) or the Program of All Inclusive Care for the Elderly (PACE).

Institutionalized Spouse is a Medicaid eligible client who begins a stay in a medical institution or nursing facility on or after September 30, 1989, or is first enrolled as a Medical Assistance client in the Program of All Inclusive Care for the Elderly (PACE) on or after October 10, 1997, or receives Home and Community Based Services (HCBS) on or after July 1, 1999; and is married to a spouse who is not in a medical institution or nursing facility. An institutionalized spouse does not include any such individual who is not likely to be in a medical institution or nursing facility or to receive HCBS or PACE for at least 30 consecutive days. Irrevocable means that the contract, trust, or other arrangement cannot be terminated, and that the funds cannot be used for any purpose other than outlined in the document.

Insurance Affordability Program (IAP) refers to Medicaid, Child Health Plan *Plus* (CHP+), and premium and cost-sharing assistance for purchasing private health insurance through state insurance marketplace.

Legal Immigrant is an individual who is not a citizen or national and has been permitted to remain in the United States by the United States Citizenship and Immigration Services (USCIS) either temporarily or as an actual or prospective permanent resident or whose extended physical presence in the United States is known to and allowed by USCIS.

Legal Immigrant Prenatal is a medical assistance program that provides medical coverage for pregnant legal immigrants who have been legal immigrants for less than five years.

Limited Disability for the Medicaid Buy-In Program for Working Adults with Disabilities means that an individual has a disability that would meet the definition of disability under SSA without regard to Substantial Gainful Activity (SGA).

Long-Term Care is Medical Assistance services that provides nursing-home care, home-health care, personal or adult day care for individuals aged at least 65 years or with a chronic or disabling condition.

Long-Term Care institution means class I nursing facilities, intermediate care facilities for the mentally retarded (ICF/MR) and swing bed facilities. Long-Term Care institutions can include hospitals.

Managed care system is a system for providing health care services which integrates both the delivery and the financing of health care services in an attempt to provide access to medical services while containing the cost and use of medical care.

Medical Assistance is defined as all medical programs administered by the Department of Health Care Policy and Financing. Medical Assistance/Medicaid joint state/federal health benefits program for individuals and families with low income and resources. It is an entitlement program that is jointly funded by the states and federal government and administered by the state. This program provides for payment of all or part of the cost of care for medical services.

Medical Assistance Required Household is defined for purposes of this volume as all parents or caretaker relatives, spouses, and dependent children residing in the same home.

Minimal verification is defined in this volume as the minimum amount of information needed to process an application for benefits. No other verification can be requested from clients unless the information provided is questionable or inconsistent.

MMMNA - Minimum Monthly Maintenance Needs Allowance is the calculation used to determine the amount of institutionalized spouse's income that the community spouse is allowed to retain to meet their monthly living needs.

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 8.100.4.

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).

Non-Filer is an individual who neither files a tax return nor is claimed as a tax dependent. For a more complete description of how household composition is determined for the MAGI Medical Assistance groups, please refer to the MAGI household composition section at 8.100.4.E.

Nursing Facility is a facility or distinct part of a facility which is maintained primarily for the care and treatment of inpatients under the direction of a physician. The patients in such a facility require supportive, therapeutic, or compensating services and the availability of a licensed nurse for observation or treatment on a twenty-four-hour basis.

OAP - Old Age Pension is a financial assistance program for low income adults age 60 or older.

OASDI - Old Age, Survivors and Disability insurance is the official term Social Security uses for Social Security Act Title II benefits including retirement, survivors, and disability. This does not include SSI payments.

Outpatient is a patient who is not hospitalized overnight but who visits a hospital, clinic, or associated facility for diagnosis or treatment. Is a patient who does not require admittance to a facility to receive medical services.

PACE - Program of All-inclusive Care for the Elderly is a unique, capitated managed care benefit for the frail elderly provided by a not-for-profit or public entity. The PACE program features a comprehensive medical and social service delivery system using an interdisciplinary team approach in an adult day health center that is supplemented by in-home and referral services in accordance with participants' needs.

Parent and Caretaker Relative is a MAGI Medical Assistance group that provides Medical Assistance to adults who are parents or Caretaker Relatives of dependent children.

Patient is an individual who is receiving needed professional services that are directed by a licensed practitioner of the healing arts toward maintenance, improvement, or protection of health, or lessening of illness, disability, or pain.

PEAK – the Colorado Program Eligibility and Application Kit is a web-based portal used to apply for public assistance benefits in the State of Colorado, including Medical Assistance.

PNA - Personal Needs Allowance means moneys received by any person admitted to a nursing care facility or Long-Term Care Institution which are received by said person to purchase necessary clothing, incidentals, or other personal needs items which are not reimbursed by a Federal or state program.

Pregnant Women is a MAGI Medical Assistance group that provides Medical Assistance coverage to pregnant women whose MAGI-based income calculation is less than 185% FPL, including women who are 60 days post-partum.

Premium means the monthly amount an individual pays to participate in a Medicaid Buy-In Program.

Provider is any person, public or private institution, agency, or business concern enrolled under the state Medical Assistance program to provide medical care, services, or goods and holding a current valid license or certificate to provide such services or to dispense such goods.

Psychiatric facility is a facility that is licensed as a residential care facility or hospital and that provides inpatient psychiatric services for individuals under the direction of a licensed physician.

Public Institution means an institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control.

Questionable is defined as inconsistent or contradictory tangible information, statements, documents, or file records.

Reasonable Compatibility refers to an allowable difference or discrepancy between the income an applicant self attests and the amount of income reported by an electronic data source. For a more complete description of how reasonable compatibility is used to determine an applicant's financial eligibility for Medical Assistance, please refer to the MAGI Income section at 8.100.4.C

Reasonable Explanation refers to the opportunity afforded an applicant to explain a discrepancy between self-attested income and income as reported by an electronic data source, when the difference is above the threshold percentage for reasonable compatibility.

Recipient is any person who has been determined eligible to receive benefits.

Resident is any individual who is living within the state and considers the state as their place of residence. Residents include any unempancipated child whose parent or other person exercising custody lives within the state.

RRB - Railroad Retirement Benefits is a benefit program under Federal law 45 U.S.C.A. § 231 et seq that became effective in 1935. It provides retirement benefits to retired railroad workers and families from a special fund, which is separate from the social security fund.

Secondary School is a school or educational program that provides instruction or training towards a high school diploma or an equivalent degree such as a GED.

SGA – Substantial Gainful Activity is defined by the Social Security Administration. SGA is the term used to describe a level of work activity and earnings. Work is "substantial" if it involves performance of significant physical or mental activities or a combination of both, which are productive in nature. For work activity to be substantial, it does not need to be performed on a full-time basis. Work activity performed on a part-time basis may also be substantial gainful activity. "Gainful" work activity is work performed for pay or profit; or work of a nature generally performed for pay or profit; or work intended for profit, whether or not a profit is realized.

Single Entry Point Agency means the organization selected to provide case management functions for persons in need of Long-Term Care services within a Single Entry Point District.

Single Streamlined Application or "SSAp" is the general application for health assistance benefits through which applicants will be screened for Medical Assistance programs including Medicaid, CHP+, or premium and cost-sharing assistance for purchasing private health insurance through a state insurance marketplace.

SISC- Supplemental Income Status Codes are system codes used to distinguish the different types of state supplementary benefits (such as OAP) a recipient may receive. Supplemental Income Status Codes determine the FFP for benefits paid on behalf of groups covered under the Medical Assistance program.

SSA - Social Security Administration is an agency of the United States federal government that administers Social Security, a social insurance program consisting of retirement, disability, and survivors' benefits.

SSI - Supplemental Security Income is a Federal income supplement program funded by general tax revenues (not Social Security taxes) that provides income to aged, blind or disabled individuals with little or no income and resources.

SSI eligible means eligible to receive Supplemental Security Income under Title XVI of the Social Security Act, and may or may not be receiving the monetary payment.

TANF - Temporary assistance to needy families is the Federal assistance program which provides supportive services and federal benefits to families with little or no income or resources. The program began on July 1, 1997, and succeeded the Aid to Families with Dependent Children program. It is the Block Grant that was established under the Personal Responsibility and Work Opportunity Reconciliation Act in Title IV of the Social Security Act.

Tax Dependent is anyone expected to be claimed as a dependent by a Tax Filer.

Tax-Filer is an individual, head of household or married couple who is required to and who files a personal income tax return.

Third Party is an individual, institution, corporation, or public or private agency which is or may be liable to pay all or any part of the medical cost of an injury, a disease, or the disability of an applicant for or recipient of Medical Assistance.

Title XIX is the portion of the federal Social Security Act which authorizes a joint federal/state Medicaid program. Title XIX contains federal regulations governing the Medicaid program.

TMA - Transitional Medical Assistance is a Medical Assistance category for families that lost Medical Assistance coverage due to increased earned income or loss of earned income disregards.

ULTC 100.2 is an assessment tool used to determine level of functional limitation and eligibility for Long-Term Care services in Colorado.

Unearned income is the gross amount received in cash or kind that is not earned from employment or self-employment.

VA - Veterans Affairs is The Department of Veterans Affairs which provides patient care and Federal benefits to veterans and their dependents.

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.

    b. A legal immigrant child who has been a legal immigrant for less than five years is eligible for Medical Assistance if all other eligibility requirements are met.

3. Parents and Caretaker Relatives applying for Medical Assistance whose total household income does not exceed 100% of the federal poverty level 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.

    a. Effective January 1, 2014, Parents and Caretaker Relatives 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

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.

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.

    a. A pregnant legal immigrant who has been a legal immigrant for less than five years is eligible for Medical Assistance if all other eligibility requirements are met. This population is referenced as Legal Immigrant Prenatal.

6. 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.

8.100.4.F. MAGI Category Presumptive Eligibility

1. A pregnant applicant may apply for presumptive eligibility for ambulatory services through Medical Assistance presumptive eligibility sites. A child under the age of nineteen may apply or have an adult apply on their behalf for presumptive eligibility for State Plan approved medical services through presumptive eligibility sites.

2. To be eligible for presumptive eligibility:

   a. a pregnant woman shall have an attested pregnancy, declare that her household's income shall not exceed 185% of the federal poverty level and declare that she is a United States citizen or a documented immigrant.

   b. a child under the age of 19 shall have a declared household income that does not exceed 133% of federal poverty level and declare that the child is a United States citizen or a documented immigrant..

3. Presumptive eligibility sites shall be certified by the Department to make presumptive eligibility determinations. Sites shall be re-certified by the Department every 2 years to remain approved presumptive eligibility sites.

4. The presumptive eligibility sites shall attempt to obtain all necessary documentation to complete the application within fourteen calendar days of application.

5. The presumptive eligibility site shall forward the application to the county within five business days of being completed. If the application is not completed within fourteen calendar days, on the fifteenth calendar day following application, the presumptive eligibility sites shall forward the application to the appropriate county.

6. The presumptive eligibility period shall be no less than 45 days. The presumptive eligibility period ends on the last day of the month following the completion of the 45 day Presumptive Eligibility period. The county department shall make a Medical Assistance eligibility determination within 45 days from receipt of the application. The effective date of Medical Assistance eligibility shall be the date of application.

7. A presumptive eligible client may not appeal the end of a presumptive eligibility period.

8. Presumptively eligible women and Medical Assistance clients may appeal the county department's failure to act on an application within 45 days from date of application or the denial of an application. Appeal procedures are outlined in the State Hearings section of this volume.

THIS PAGE NOT FOR PUBLICATION

Title of Rule:	Revision to the Medical Assistance Health Programs Office Benefits and Operations Division Rule Concerning Women's Health Services, Section 8.731
Rule Number:	MSB 14-11-19-D
Division / Contact / Phone:	HPO B&O / Melanie Reece / x3693

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-D, Revision to the Medical Assistance Health Programs Office Benefits and Operations Division Rule Concerning Women's Health Services, Section 8.731
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) 8.731, 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 sub section of rule. It should be inserted immediately following text at §8.730.4.E and immediately before current text at §8.470. There is no redline version of this rule.
This revision is effective 07/01/2015.

*to be completed by MSB Board Coordinator

THIS PAGE NOT FOR PUBLICATION

Title of Rule:	Revision to the Medical Assistance Health Programs Office Benefits and Operations Division Rule Concerning Women's Health Services, Section 8.731
Rule Number:	MSB 14-11-19-D
Division / Contact / Phone:	HPO B&O / Melanie Reece / x3693

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 Women's Health 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) of the Social Security Act, codified at 42 U.S.C. 1396d(a)(2); 42 CFR § 440.230.

4. State Authority for the Rule:

   25.5-1-301 through 25.5-1-303, C.R.S. (2014);

Initial Review	**04/10/2015**	Final Adoption	**05/08/2015**
Proposed Effective Date	**07/01/2015**	Emergency Adoption	

THIS PAGE NOT FOR PUBLICATION

Title of Rule:	Revision to the Medical Assistance Health Programs Office Benefits and Operations Division Rule Concerning Women's Health Services, Section 8.731
Rule Number:	MSB 14-11-19-D
Division / Contact / Phone:	HPO B&O / Melanie Reece / x3693

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 women's health 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 rule will provide guidance to clients and providers regarding benefit coverage.

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.

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.

8.731 WOMEN'S HEALTH SERVICES

8.731.1 Definitions

BRCA means a mutation in breast, ovarian, tubal, or peritoneal cancer susceptibility genes. The mutation may be either BRCA1 or BRCA2.

BRCA Screening means to assess whether a client has a documented biological family history of breast, ovarian, tubal, or peritoneal cancer that may be associated with an increased risk for potential mutation in breast cancer susceptibility genes (BRCA1 and BRCA2).

Sterile/Sterility means permanently rendered incapable of reproducing.

8.731.2 Client Eligibility

8.731.2.A. All female and transgender Medicaid clients are eligible for women's health services.

8.731.3. Provider Eligibility

8.731.3.A. All Colorado Medicaid enrolled providers are eligible to provide women's health services when it is within the scope of the provider's practice.

8.731.4. Covered Services

8.731.4.A. Women's Health Services are covered when medically necessary, as defined at Section 8.076.1.8, and within the limitations described in this section 8.731 and under 10 CCR 2505-10 as applicable.

8.731.4.B. All services are covered as often as clinically indicated, unless otherwise restricted under this rule.

8.731.4.C. The following services are covered:

1. Annual gynecological exam

2. Cervical cancer screening and follow-up

    a. Cervical cancer screenings are only covered once per state fiscal year, unless clinical indication requires additional screening.

    b. Further diagnostic and treatment procedures are covered as clinically indicated.

3. Sexually transmitted disease/infection testing, risk counseling, and treatment

4. Human Papillomavirus (HPV) vaccination

    a. HPV vaccination is only covered for clients ages 9 through 26.

    b. For clients ages 9 through 18 who are covered through the Vaccines for Children program, only the administration of the vaccine is covered in accordance with 8.200.3.C.2.

    c. For clients ages 19 through 26, the administration of the vaccine and the vaccine are covered in accordance with 8.200.3.C.2.

5. BRCA screening, genetic counseling, and testing

    a. BRCA screening, genetic counseling, and testing is only covered for clients over the age of 18.

    b. BRCA screening is covered and must be conducted prior to any BRCA-related genetic testing.

    c. The provider shall make genetic counseling available to clients with a positive screening both before and after genetic testing, if the provider is able, and genetic counseling is within the provider's scope of practice. If the provider is unable to provide genetic counseling, the provider shall refer the client to a genetic counselor.

    d. Genetic testing for breast cancer susceptibility genes BRCA1 and BRCA2 is covered for clients with a positive screening.

6. Mammography

    a. Mammography is covered for clients who are age 40 and older; or, have been clinically assessed as at high risk for, or have a history of, breast disease.

7. Mastectomy

    a. Mastectomy is covered for women who have a positive genetic test as a BRCA mutation carrier.

    b. Bilateral mastectomy is a covered benefit when there is a known breast disease in either breast.

    c. Prophylactic bilateral mastectomy is a covered benefit for women who have tested positive for the BRCA1 or BRCA2 mutation or have a personal history of breast disease.

    d. For clients who have undergone a mastectomy, a maximum of two mastectomy brassieres are covered per year.

8. Breast reconstruction is covered within five years of a mastectomy.

9. Breast reduction procedures are covered for clients with macromastia and there is a documented failure of alternative treatment for macromastia.

10. Hysterectomy

    a. Hysterectomy is covered when performed solely for medical reasons and when all of the following conditions are met:

        i) The client is over the age of 20, or is a BRCA1 or BRCA2 carrier over the age of 18;

        ii) The person who secures the authorization to perform the hysterectomy has informed the client, or the client's authorized representative, as defined in Section 8.057.1, orally and in writing that the hysterectomy will render the client Sterile;

iii) The client, or the client's authorized representative, as defined in Section 8.057.1, has acknowledged in writing, that the client or representative has been informed the hysterectomy will render the client Sterile; and

iv) The Department or its designee has been provided with a copy of the written acknowledgment under 8.731.4.C.10.a.iii. The acknowledgement must be received by the Department or its designee before reimbursement for any services related to the procedure will be made.

b. A written acknowledgment of Sterility from the client is not required if either of the following circumstances exist:

i) The client is already Sterile at the time of the hysterectomy; or,

ii) The client requires a hysterectomy because of a life-threatening emergency in which the physician determines prior acknowledgement is not possible.

c. If an acknowledgement of Sterility is not required because of the 8.731.4.C.10.b exceptions, the physician who performs the hysterectomy shall certify in writing that either:

i) The client was already Sterile, stating the cause of that sterility; or,

ii) The hysterectomy was performed under a life-threatening emergency situation in which the physician determined prior acknowledgement was not possible. The physician must include a description of the emergency.

d. The Department or its designee must be provided with a copy of the physician's written certificate under 8.731.4.C.10.c. The acknowledgement must be received by the Department or its designee before reimbursement for any services related to the procedure will be made.

8.731.5 Non-Covered Services

8.731.5.A. Prophylactic bilateral mastectomy is not covered when:

1. There is no known breast disease present or personal history of breast disease**,** or**,**

2. The client does not test positive for the BRCA1 or BRCA2 mutation.

8.731.5.B. Hysterectomy for the sole purpose of sterilization.

1. If more than one purpose for the hysterectomy exists, but the purpose of sterilization is primary, the hysterectomy is not a covered service.

8.731.5.C. Routine BRCA genetic testing for clients whose family history is not associated with an increased risk of BRCA gene mutation is not covered.

8.731.6. Prior Authorization

8.731.6.A. All breast reconstruction and reduction procedures require prior authorization.

8.731.6.B. All BRCA genetic testing requires prior authorization.

THIS PAGE IS NOT FOR PUBLICATION

88Title of Rule:	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
Rule Number:	MSB 14-09-16-B
Division / Contact / Phone:	HPO B&O / Valerie Baker-Easley / x3684

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 14-09-16-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
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) 8.730.4 and 8.770, 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*

Delete all current text beginning at §8.730.4 through the end of §8.730.4.E.
Insert new text in a new subsection beginning at §8.770 through §8.770.5.A immediately following current text at §8.766
This revision is effective 07/01/2015

*to be completed by MSB Board Coordinator

THIS PAGE IS NOT FOR PUBLICATION

Title of Rule:	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
Rule Number:	MSB 14-09-16-B
Division / Contact / Phone:	HPO B&O / Valerie Baker-Easley / x3684

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 remove Abortion Services from the Family Planning rule 8.730.4 and moving it to 8.770 as a stand alone rule.

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) of the Social Security Act, codified at 42 U.S.C. 1396d(a)(2); 42 CFR § 440.230 and 42 CFR § 441.200-208.

4. State Authority for the Rule:

   25.5-1-301 through 25.5-1-303, C.R.S. (2014);
   25.5-3-106, C.R.S. (2014)

Initial Review	**04/10/2015**	Final Adoption	**05/08/2015**
Proposed Effective Date	**07/01/2015**	Emergency Adoption	

THIS PAGE IS NOT FOR PUBLICATION

Title of Rule:	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
Rule Number:	MSB 14-09-16-B
Division / Contact / Phone:	HPO B&O / Valerie Baker-Easley / x3684

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 only those clients who meet federal criteria as eligible for the service and qualified medical providers of the 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 clarify the federal mandatory requirements for coverage of abortion services, and will provide guidance to clients and providers regarding benefit coverage.

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 will clarify the federal mandatory requirements for coverage of abortion services, and will provide guidance to clients and providers regarding benefit coverage. The cost of inaction would result in lack of compliance with federal law.

All of the above translates into cost savings for 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.

There are no less costly methods or less intrusive methods for achieving the purpose of this rule because the Department define the amount, scope, and duration of its benefits. 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 law.

8.730.4 This rule was removed 07/01/2015

8.770 ABORTION SERVICES

8.770.1. Definitions

Life-Endangering Circumstance means:

1. The presence of a medical condition, other than a psychiatric condition, as determined by the attending physician, which represents a serious and substantial threat to the life of the pregnant woman if the pregnancy continues to term; or

2. The presence of a psychiatric condition, which represents a serious and substantial threat to the life of the pregnant woman if the pregnancy continues to term. In such cases, unless the pregnant woman has been receiving prolonged psychiatric care, the attending physician shall obtain consultation from a licensed physician specializing in psychiatry confirming the presence of such a psychiatric condition.

8.770.2. Client Eligibility

8.770.2.A. All Colorado Medicaid-enrolled clients are eligible.

8.770.3. Provider Eligibility

8.770.3.A. All Colorado Medicaid enrolled providers in compliance with CRS § 25.5-3-106 are eligible to perform abortion services.

8.770.4. Covered Services

8.770.4.A. Abortion services are only covered when the life of the mother would be endangered if the fetus were carried to term; or when the pregnancy is the result of an act of rape or incest.

8.770.4.B. In cases of a life-endangering circumstance, the physician must make every reasonable effort to preserve the lives of the pregnant woman and the unborn child.

8.770.4.C. A licensed physician shall perform the procedure in a licensed health care facility. When the pregnancy substantially threatens the life of the client, and the transfer to a licensed health care facility would, in the medical judgment of the attending physician, further threaten the life of the client, the abortion may be provided outside of a licensed health care facility.

8.770.4.D. Any claim for payment must be accompanied by a case summary that includes the following information:

1. Name, address, and age of the pregnant woman;

2. Gestational age of the unborn child;

3. Description of the medical condition which necessitated the abortion;

4. Services performed;

5. Facility in which the abortion was performed; and

6. Date of service.

8.770.4.E. A claim for payment for an abortion that is the result of life-endangering circumstances must also be accompanied by at least one of the following forms with additional supporting documentation that confirms the life-endangering circumstances:

1. Hospital admission summary

2. The findings and reports from consultants that provide opinions regarding the health of the client

3. Laboratory results and findings

4. Office visit notes

5. Hospital progress notes

8.770.4.F. A claim for payment for an abortion that is the result of rape or incest must be accompanied by a Department-approved certification statement confirming the circumstances of the abortion.

8.770.4.G. An evaluation by a licensed physician specializing in psychiatry must accompany the claim for reimbursement for the abortion if a psychiatric condition represents a serious and substantial threat to the pregnant woman's life if the pregnancy continues to term.

8.770.5. Prior Authorization Requirements (PAR)

8.770.5.A. Prior authorization is not required for this service.

THIS PAGE NOT FOR PUBLICATION

Title of Rule:	Revision to the Medical Assistance Home and Community Based Services for Elderly, Blind and Disabled Rule Concerning Respite Care, Section 8.492
Rule Number:	MSB 15-01-26-A
Division / Contact / Phone:	Long Term Services and Supports / Colin Laughlin / 866-2549

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 15-01-26-A, Revision to the Medical Assistance Home and Community Based Services for Elderly, Blind and Disabled Rule Concerning Respite Care, Section 8.492
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) 8.492, 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 current text at §8.492.10.12 with new text provided.
Replace current text at §8.492.30.31 with new text provided.
Replace current text at §8.492.50.53-55 with new text provided.
All text indicated in blue is for clarification purposes only and should not be changed.
This revision is effective 07/01/2015

*to be completed by MSB Board Coordinator

THIS PAGE NOT FOR PUBLICATION

Title of Rule:	Revision to the Medical Assistance Home and Community Based Services for Elderly, Blind and Disabled Rule Concerning Respite Care, Section 8.492
Rule Number:	MSB 15-01-26-A
Division / Contact / Phone:	Long Term Services and Supports / Colin Laughlin / 866-2549

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).

   Revision of Respite rule to allow for the targeted rate increase to be implemented and remove unintended limitations on services for the In-Home Respite service.

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:

4. State Authority for the Rule:

   25.5-1-301 through 25.5-1-303, C.R.S. (2014);

Initial Review	**04/10/2015**	Final Adoption	**05/08/2015**
Proposed Effective Date	**07/01/2015**	Emergency Adoption	

DOCUMENT #09

THIS PAGE NOT FOR PUBLICATION

Title of Rule:	Revision to the Medical Assistance Home and Community Based Services for Elderly, Blind and Disabled Rule Concerning Respite Care, Section 8.492
Rule Number:	MSB 15-01-26-A
Division / Contact / Phone:	Long Term Services and Supports / Colin Laughlin / 866-2549

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.

Clients in the EBD, SCI and BI waiver will all benefit from the proposed rule change by removing unintended limitations to the service and that will accommodate the targeted rate increase. The cost of the proposed rule change is not projected to have any impact and will be covered by the current appropriation for HCBS-EBD, SCI and BI waiver 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.

There is not a quantitative nor a qualitative impact on clients.

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 additional cost to the Department outside of the appropriation of waivered services allowed by the targeted rate increase.

4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

In order to comply with the legislative appropriation of funds for the targeted rate increase, it will be necessary to change the rule in order to accommodate said rate increase.

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.

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 achieving the purpose of the proposed rule and of simplifying waivered services.

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 respite care provided in a residence by 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 Section 8.495, ALTERNATIVE CARE FACILITIES, 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 certification period unless otherwise authorized by the Department.

.32 Alternative care facilities shall not admit individuals for respite care who are not appropriate for alternative care facility placement, as specified at Section 8.495, ALTERNATIVE CARE FACILITIES.

.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 PASARR review, an AP-5615 form, a physical, a dietitian assessment, a therapy assessment, or lab work 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 a unit rate or daily institutional Nursing Facility 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 There shall be no reimbursement provided under this section for respite care in uncertified congregate facilities.

THIS PAGE NOT FOR PUBLICATION

Title of Rule:	Revision to the Medical Assistance, Health Information Office Rule Concerning Enrollment Procedures, Section 8.013.1
Rule Number:	MSB 15-02-18-C
Division / Contact / Phone:	Provider Payment / Laurie Stephens / 3038663283

SECRETARY OF STATE
RULES ACTION SUMMARY AND FILING INSTRUCTIONS

SUMMARY O\ ACTION ON RULE(S)

1. Department / Agency Name: Health Care Policy and Financing / Medical Services Board
2. Title of Rule: MSB 15-02-18-C, Revision to the Medical Assistance, Health Information Office Rule Concerning Enrollment Procedures, Section 8.013.1
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) 8.013.1, 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 current text beginning at §8.013 through the end of §8.013.3) with the new text provided beginning at §8.013 through the end of the unnumbered paragraph. This revision is effective 07/01/2015

*to be completed by MSB Board Coordinator

THIS PAGE NOT FOR PUBLICATION

Title of Rule:	Revision to the Medical Assistance, Health Information Office Rule Concerning Enrollment Procedures, Section 8.013.1
Rule Number:	MSB 15-02-18-C
Division / Contact / Phone:	Provider Payment / Laurie Stephens / 3038663283

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).

   Out of state providers attempt to enroll with a limited amount of information due to the existing rule found at 8.013.1. Due to CMS provider screening rules, we must treat out of state providers the same as in state and follow the same enrollment requirements.

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:

   42 CFR § 455 (b) and (e)

4. State Authority for the Rule:

   25.5-1-301 through 25.5-1-303, C.R.S. (2014);

Initial Review	**04/10/2015**	Final Adoption	**05/08/2015**
Proposed Effective Date	**07/01/2015**	Emergency Adoption	

DOCUMENT #11

THIS PAGE NOT FOR PUBLICATION

Title of Rule:	Revision to the Medical Assistance, Health Information Office Rule Concerning Enrollment Procedures, Section 8.013.1
Rule Number:	MSB 15-02-18-C
Division / Contact / Phone:	Provider Payment / Laurie Stephens / 3038663283

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 applies to all Medicaid and CHP+ providers. The ACA Provider Screening Rules issued by CMS applies to Medicaid and CHP+ and is designed to prevent fraud, waste and abuse. Ordering, referring, and prescribing providers will be required to enroll.

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 Department may lose Medicaid and CHP+ providers who do not wish to pay the application fee and revalidate with the Department. Providers are categorized into three risk levels: limited, moderate and high. Some moderate and high risk providers must undergo site surveys, fingerprinting, and background checks. Providers who do not wish to undergo these preliminaries cannot enroll with the Department.

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.

Enhanced federal funds are available for the Department to implement the Colorado interChange, which will be used to provide an online application for providers.

4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

By implementing the ACA Provider Screening Rule the Department will be in compliance with federal regulations, otherwise the Department may lose federal match funding. The ACA Provider Screening Rules is designed to prevent fraud, waste and abuse.

5. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

ACA Provider Screening Rule limits the Department's flexibility in implementing the rule. The Department is in the process of seeking authorization from CMS to waive the fee for as many providers as possible.

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.

ACA Provider Screening Rule limits the Department's flexibility in implementing the rule.

8.013.1 ENROLLMENT PROCEDURES

To receive reimbursement, all out of state providers shall be required to enroll in the Colorado Medicaid Program. Out of state providers are subject to the same enrollment and screening rules, policies and procedures as in state providers, as specified in Section 8.125 Provider Screening..

THIS PAGE NOT FOR PUBLICATION

Title of Rule:	Revision to the Medical Assistance, Health Information Office Rule Concerning Provider Screening Regulations, Section 8.125
Rule Number:	MSB 15-02-18-B
Division / Contact / Phone:	HIO / Chris Underwood / 3038664766

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 15-02-18-B, Revision to the Medical Assistance, Health Information Office Rule Concerning Provider Screening Regulations, Section 8.125
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) Insert Section(s) affected, 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 rule. Insert new text provided beginning at §8.125 through the end of §8.125.15.F immediately following current text at §8.100.7.V and immediately before current text at §8.130.
This revision is effective 07/01/2015.

*to be completed by MSB Board Coordinator

THIS PAGE NOT FOR PUBLICATION

Title of Rule:	Revision to the Medical Assistance, Health Information Office Rule Concerning Provider Screening Regulations, Section 8.125
Rule Number:	MSB 15-02-18-B
Division / Contact / Phone:	HIO / Chris Underwood / 3038664766

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 intends to implement the ACA Provider Screening Requirements as issued by CMS. This rule applies to Medicaid and CHP+ providers and is designed to prevent fraud, waste and abuse. Providers are required to revalidate enrollment at least every five years, and all current providers must be revalidated by March 2016. Ordering, referring, and prescribing providers will be required to enroll with the Department. An application fee will be required from some providers. There are three risk categories assigned to providers and based on the risk level, some providers will be required to have site visits, some will require background checks and fingerprint submissions. Licensure verifications, exclusion database checks, and meeting federal and state rules are required for all. Providers, fiscal agents, and managed care organizations will be required to disclose ownership and control interest.

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:

   42 CFR § 455(b) and 42 CFR § 455(e)

4. State Authority for the Rule:

   25.5-1-301 through 25.5-1-303, C.R.S. (2014);

Initial Review	**04/10/2015**	Final Adoption	**05/08/2015**
Proposed Effective Date	**07/01/2015**	Emergency Adoption	

DOCUMENT #10

THIS PAGE NOT FOR PUBLICATION

Title of Rule:	Revision to the Medical Assistance, Health Information Office Rule Concerning Provider Screening Regulations, Section 8.125
Rule Number:	MSB 15-02-18-B
Division / Contact / Phone:	HIO / Chris Underwood / 3038664766

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 applies to all Medicaid and CHP+ providers. Many providers are required to pay an application fee. This application fee does not apply to: 1) individual providers, 2) providers who have enrolled or re-validated in Medicare within the last 12 months and paid the application fee, or 3) providers who have enrolled in another state's Medicaid or CHP+ within the last 12 months and paid the application fee. The Department is in the process of seeking authorization from CMS to waive the fee for as many providers as possible.

   The ACA Provider Screening Rules issued by CMS applies to Medicaid and CHP+ and is designed to prevent fraud, waste and abuse. Providers are required to revalidate enrollment at least every five years, and all current providers are required to revalidate by March 2016. Ordering, referring, and prescribing providers will be required to enroll. There are three risk categories assigned to providers and based on the risk level, some providers will be required to have site visits, some will require background checks and fingerprint submissions. Licensure verifications, database checks and meeting federal and state rules is required for all. Providers, fiscal agents and managed care organizations will be required to disclose ownership and control interest.

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 Department may lose Medicaid and CHP+ providers who do not wish to pay the application fee and revalidate with the Department. Providers are categorized into three risk levels: limited, moderate and high. Some moderate and high risk providers must undergo site surveys, fingerprinting, and background checks. Providers who do not wish to undergo these preliminaries cannot enroll with the Department.

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.

   Enhanced federal funds are available for the Department to implement the Colorado interChange, which will be used to provide an online application for providers.

4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

   By implementing the ACA Provider Screening Rule the Department will be in compliance with federal regulations, otherwise the Department may lose federal match funding. The ACA Provider Screening Rules is designed to prevent fraud, waste and abuse.

5. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

   ACA Provider Screening Rule limits the Department's flexibility in implementing the rule. The Department is in the process of seeking authorization from CMS to waive the fee for as many providers as possible.

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.

   ACA Provider Screening Rule limits the Department's flexibility in implementing the rule.

8.125 PROVIDER SCREENING

8.125.1 DEFINITIONS.

Managed Care Entity is defined at 42 CFR § 455.101

Ownership interest is defined at 42 CFR § 455.101.

Person with an ownership or control interest is defined at 42 CFR § 455.101.

Enrollment is defined as the process by which an individual or entity not currently enrolled as a Colorado Medicaid provider submits a provider application, undergoes any applicable screening, pays an application fee, as appropriate for the provider type, and is approved by the Department for participation in the Medicaid program. Entities that have never previously enrolled as Medicaid providers or whose enrollment was previously terminated and are not currently enrolled are required to enroll. The date of enrollment shall be considered the date that is communicated to the provider in communication from the Department or its fiscal agent verifying the provider's enrollment in Medicaid.

Re-validation is defined as the process by which an individual or entity currently enrolled as a Colorado Medicaid provider resubmits a provider application, undergoes a state-defined screening process, pays an application fee, as appropriate for the provider type, and is approved by the Department to continue participating in the Medicaid program. The date of revalidation shall be considered the date that the provider's application was received by the Department's fiscal agent.

"Disclosing Entity" and "Other Disclosing Entity" are defined at 42 CFR § 455.101.

8.125.2 PROVIDERS DESIGNATED AS LIMITED CATEGORICAL RISK AND NEW PROVIDER TYPES

8.125.2.A. Except as provided for in Section 8.125.2.B, provider types not designated as moderate or high categorical risk at Sections 8.125.3 or 8.125.4 shall be considered limited risk.

8.125.2.B. The risk category for each provider type designated by CMS shall be the risk category for purposes of this rule regardless of whether a provider type may be listed in Sections 8.125.3 or 8.125.4.

8.125.3 PROVIDERS DESIGNATED AS MODERATE CATEGORICAL RISK

8.125.3.A. Emergency Transportation including ambulance service suppliers

8.125.3.B. Non-Emergency Medical Transportation

8.125.3.C. Community Mental Health Center

8.125.3.D. Hospice

8.125.3.E. Independent Laboratory

8.125.3.F. Comprehensive Outpatient Rehabilitation Facility

8.125.3.G. Physical Therapists, both individuals and group practices

8.125.3.H. Re-validating Home Health agencies

8.125.3.I. Re-validating Durable Medical equipment suppliers, including revalidating pharmacies that supply Durable Medical Equipment

8.125.3.J. Re-validating Personal Care providers under the state plan

8.125.3.K. Providers of the following services for HCBS waiver clients:

1. Alternative Care Facility
2. Adult Day Services
3. Assistive Technology, if the provider is re-validating
4. Behavioral Programing
5. Behavioral Therapies
6. Behavioral Health Supports
7. Behavioral Services
8. Care Giver Education
9. Children's Case Management
10. Children's Habilitation Residential Program (CHRP)
11. Community Connector
12. Community Mental Health Services
13. Community Transition Services
14. Complementary and Integrative Health
15. Day Habilitation
16. Day Treatment
17. Enhanced Nursing Services
18. Expressive Therapy
19. Home Delivered Meals
20. Home Modifications/Adaptations/Accessibility
21. Independent Living Skills Training
22. In-Home Support Services, if the provider is re-validating
23. Intensive Case Management
24. Massage Therapy

25. Mentorship

26. Non-Medical Transportation

27. Palliative/Supportive Care Skilled

28. Peer Mentorship

29. Personal Care/Homemaker Services, if the provider is re-validating

30. Personal Emergency Response System/Medication Reminder/Electronic Monitoring

31. Prevocational Services

32. Professional Services

33. Residential Habilitation Services

34. Respite

35. Specialized Day Rehabilitation Services

36. Specialized Medical Equipment and Supplies, if the provider is re-validating

37. Substance Abuse Counseling

38. Supported Employment

39. Supported Living Program

40. Therapy and Counseling

41. Transitional Living Program

8.125.4 PROVIDERS DESIGNATED AS HIGH CATEGORICAL RISK

8.125.4.A. Enrolling DME suppliers

8.125.4.B. Enrolling Home Health agencies

8.125.4.C. Enrolling Personal Care providers providing services under the state plan

8.125.4.D. Enrolling providers of the following services for HCBS waiver clients:

1. Assistive Technology

2. Personal Care/Homemaker Services

3 Specialized Medical Equipment and Supplies

4 In-Home Support Services

8.125.4.E. Enrolling and Re-validating providers for which the Department has suspended payments during an investigation of a credible allegation of fraud, waste, or abuse, for the duration of the suspension of payments.

8.125.4.F. Enrolling and Re-validating providers which have a delinquent debt owed to the State arising out of Medicare, Colorado Medical Assistance or other programs administered by the Department, not including providers which are current under a settlement or repayment agreement with the State.

8.125.4.G. Providers that were excluded by the HHS Office of Inspector General or had their provider agreement terminated for cause by the Department, its contractors or agents or another State's Medicaid program at any time within the previous 10 years.

8.125.4 .H. Providers applying for enrollment within six (6) months from the time that the Department or CMS lifts a temporary enrollment moratorium on the provider's enrollment type

8.125.5 PROVIDERS WITH MULTIPLE RISK LEVELS

8.125.5.A Providers shall be screened at the highest applicable risk level for which a provider meets the criteria. Providers shall only pay one application fee per location.

8.125.6 PROVIDERS WITH MULTIPLE LOCATIONS

8.125.6.A. Providers must enroll separately each location from which they provide services. Only claims for services provided at locations that are enrolled are eligible for reimbursement

8.125.6.B. Each provider site will be screened separately and must pay a separate application fee. Providers shall only pay one application fee per location.

8.125.7 ENROLLMENT AND SCREENING OF PROVIDERS

8.125.7.A. All enrolling and re-validating providers must be screened in accordance with requirements appropriate to their categorical risk level.

8.125.7.B. Notwithstanding any other provision of the Colorado Code of Regulations, providers who provide services to Medicaid clients as part of a managed care entity's provider network who would have to enroll in order to participate in fee-for-service Medicaid must enroll with the Department and be screened as Medicaid providers.

8.125.7.C. Nothing in Section 8.125.7.B shall require a provider who provides services to Medicaid clients as part of a managed care entity's provider network to participate in fee-for-service Medicaid.

8.125.7.D. All physicians or other professionals who order, prescribe, or refer services or items for Medicaid clients, whether as part of fee-for-service Medicaid or as part of a managed care entity's provider network under either the state plan, the Children's Health Insurance Program, or a waiver, must be enrolled in order for claims submitted for those ordered, referred, or prescribed services or items to be reimbursed or accepted for the calculation of managed care rates by the Department.

8.125.7.E. The Department may exempt from screening any providers who have been screened by and enrolled or revalidated:

1. By Medicare within the last 12 months, or

2. By another state's Medicaid program within the last 12 months, provided the Department has determined that the state in which the provider was enrolled or revalidated has

screening requirements at least as comprehensive and stringent as those for Colorado Medicaid.

8.125.7.F The Department may deny a Provider's enrollment or terminate a Provider agreement for failure to comply with screening requirements.

8.125.7.G The Department may terminate a Provider agreement or deny the Provider's enrollment if CMS or the Department determines that the provider has falsified any information provided on the application or cannot verify the identity of any provider applicant

8.125.8 NATIONAL PROVIDER IDENTIFIER

8.125.8.A. As a condition of reimbursement, any claim submitted for a service or item that was ordered, referred, or prescribed for a Medicaid client must contain the National Provider Identifier (NPI) of the ordering, prescribing or referring physician or other professional.

8.125.9 VERIFICATION OF PROVIDER LICENSES

8.125.9.A. If a provider is required to possess a license or certification in order to provide services or supplies in the State of Colorado, then that provider must be so licensed as a condition of enrollment as a Medicaid provider.

8.125.9.B. As a condition of enrollment, any required licenses must be active without any current limitations.

8.125.10 RE-VALIDATION

8.125.10.A. Providers who are enrolled in Medicaid as of July 1, 2015, must re-validate before March 31, 2016, and at least every five years thereafter.

8.125.10.B. Providers who enroll in Medicaid after July 1, 2015, must re-validate at least every five years thereafter.

8.125.10.C. A provider shall comply with all requirements for Re-validation by the dates in Sections 8.125.10.A or 8.125.10.B. If a provider fails to comply with any requirement for Re-validation by the dates in Sections 8.125.10.A or 8.125.10.B, the provider agreement shall be suspended.

8.125.10.D. If a provider fails to comply with all requirements for Re-validation within 30 days of the dates in Sections 8.125.10.A or 8.125.10.B, the provider agreement may be terminated. In the event that the provider agreement is terminated pursuant to this section, any claims submitted after the dates in Sections 8.125.10.A or 8.125.10.B, above, are not reimbursable beginning on the day after the date that the provider's revalidation application was due to the Department.

8.125.11 SITE VISITS

8.125.11.A. All providers designated as "moderate" or "high" categorical risks to the Medicaid program must consent to and pass a site visit before they may be enrolled or re-validated as Colorado Medicaid providers. The purpose of the site visit is to verify that the information submitted to the state department is accurate and to determine compliance with federal and state enrollment requirements.

8.125.11.B. All enrolled providers who are designated as "moderate" or "high" categorical risks must consent to and pass an additional site visit after enrollment or revalidation. The purpose of the site visit is to verify that the information submitted to the state department is accurate and to determine compliance with federal and state enrollment requirements. Post-enrollment or post-

revalidation site visits may occur anytime during the five-year period after enrollment or revalidation.

8.125.11.C. All providers enrolled in the Colorado Medicaid program must permit CMS, its agents, its designated contractors, the State Attorney General's Medicaid Fraud Control Unit or the Department to conduct unannounced on-site inspections of any and all provider locations

8.125.11.D. All site visits shall verify the following information:

1. Basic Information including business name, address, phone number, on-site contact person, National Provider Identification number and Employer Identification Number, business license, provider type, owner's name(s), and owner's interest in other medical businesses.

2. Location including appropriate signage, utilities that are turned on, the presence of furniture and applicable equipment, and disability access where applicable and where clients are served at the business location.

3. Employees with relevant training, designated employees who are trained to handle Medicaid billing, where applicable, and resources the provider uses to train employees in Medicaid billing where applicable.

4. Appropriate inventory necessary to provide services for specific provider type.

5. Other information as designated by the Department.

8.125.11.E. The Department shall give the provider a report detailing the discrepancies or insufficiencies in the information disclosed by the provider and the criteria the provider failed to meet during the site visit.

8.125.11.F. Providers that are found in full compliance shall be recommended for approval of enrollment or revalidation, subject to other enrollment or revalidation requirements.

8.125.11.G. Providers who meet the vast majority of criteria in 8.125.11.D but have small number of minor discrepancies or insufficiencies shall have 60 days from the date of the issuance of the report in 8.125.11.E to submit documentation to the Department attesting that the provider has corrected the issues identified during the site visit.

1. If the provider submits attestation within the 60 day timeframe and has met requirements, then the provider shall be recommended for enrollment or revalidation, subject to the verification of other enrollment or revalidation requirements.

2. If the provider fails to submit the attestation in 8.125.11.G.1 within the 60 day deadline, the Department may deny the provider's application for enrollment or revalidation.

3. If the provider submits an attestation within 60 days indicating that the provider is not fully compliant with criteria in 8.125.11.D, then the Department may,

    a. For existing providers, suspend the provider, until the provider demonstrates compliance in a subsequent site visit, conducted at the provider's expense; or

    b. For new providers, deny the application and require the provider to restart the enrollment process.

8.125.11.H. When site visits reveal major discrepancies or insufficiencies in the information provided in the enrollment application or a majority of the criteria described in 8.125.11.D are not met, the Department shall allow for an additional site visit for the provider.

1. Additional site visits shall be conducted at the provider's expense.

2. The provider shall have 14 days from the date of the issuance of the report listed in 8.125.11.E above to request an additional site visit.

3. The Department shall deny or terminate enrollment or revalidation of any provider subject to 8.125.11.G who does not request an additional site visit within 14 days.

4. If the Department determines that a provider is not in full compliance upon the additional site visit:

a. for a revalidating provider, the Department shall immediately suspend the provider until a subsequent site visit demonstrates provider is in compliance.

b. for an enrolling provider, deny the application and require the provider to restart the enrollment process.

8.125.11.I. The Department shall deny or terminate enrollment or revalidation of any provider who refuses to allow a site visit, unless the Department determines the provider or the provider's staff refused the on-site inspection in error. The provider must provide credible evidence to the Department that it refused the on-site inspection in error within in 7 days of the date of the issuance of the report in 8.125.11.E. Any provider who does not provide credible evidence to the Department that it refused the on-site inspection in error shall be denied or terminated from enrollment or revalidation.

8.125.11.J. The Department shall deny an application or terminate a provider's enrollment when an on-site inspection provides credible evidence that the provider has committed Medicaid fraud.

8.125.11.K. The Department shall refer providers in 8.125.11.J to the State Attorney General.

8.125.12 CRIMINAL BACKGROUND CHECKS AND FINGERPRINTING

8.125.12.A. As a condition of provider enrollment, any person with an ownership or control interest in a provider designated as "high" categorical risk to the Medicaid program, must consent to criminal background checks and submit a set of fingerprints, in a form and manner to be determined by the Department.

8.125.12.B. Any provider, and any person with an ownership or control interest in the provider, must consent to criminal background checks and submit a set of fingerprints, in a form and manner designated by the Department, within 30 days upon request from CMS, the Department, the Department's agents, or the Department's designated contractors.

8.125.13 APPLICATION FEE

8.125.13.A. Except when exempted in Sections 8.125.13.C and 8.125.13.D, enrolling and re-validating providers must submit an application fee or a formal request for a hardship exemption with their application.

8.125.13.B. The amount of the application fee is the amount calculated by CMS in accordance with 42 CFR § 424.514(d).

8.125.13.C. Application fees shall apply to all providers except:

1. Individual practitioners

2. Providers who have enrolled or re-validated in Medicare and paid an application fee within the last 12 months

3. Providers who have enrolled or re-validated in another State's Medicaid or Children's Health Insurance Program and paid an application fee within the last 12 months provided that the Department has determined that the screening procedures in the state in which the provider is enrolled are at least as comprehensive and stringent as the screening procedures required for enrollment in Colorado Medicaid.

8.125.13.D. The Department may exempt a provider, or group of providers, from paying the applicable application fee, through a hardship exemption request or categorical fee waiver, if:

1. The Department determines that requiring a provider to pay an application fee would negatively impact access to care for Medicaid clients, and

2. The Department receives approval from the Centers for Medicare and Medicaid Services to exempt the application fee.

8.125.13.E. A provider may not be enrolled or revalidated unless the provider has either paid any applicable application fee or obtained an exemption described at Section 8.125.13.D.

8.125.13.F. The application fee is non-refundable, except if submitted with one of the following:

1. A request for hardship exemption described at Section 8.125.13.D, that is subsequently approved;

2. An application that is rejected prior to initiation of screening processes;

3. An application that is subsequently denied as a result of the imposition of a temporary moratorium as described at Section 8.125.14.

8.125.14 TEMPORARY MORATORIA

8.125.14.A. In consultation with CMS and HHS, the Department may impose temporary moratoria on the enrollment of new providers or provider types, or impose numerical caps or other limits on providers that the Department and the Secretary of HHS identify as being a significant potential risk for fraud, waste, or abuse, unless the Department determines that such an action would adversely impact Medicaid clients' access to medical assistance.

8.125.14.B. Before imposing any moratoria, caps, or other limits on provider enrollment, the Department shall notify the Secretary of HHS in writing and include all details of the moratoria.

8.125.14.C. The Department shall obtain the Secretary of HHS's concurrence with imposition of the moratoria, caps, or other limits on provider enrollment, before such limits shall take effect.

8.125.15 DISCLOSURES BY MEDICAID PROVIDERS, MANAGED CARE ENTITIES, AND FISCAL AGENTS

8.125.15.A. All Medicaid providers, disclosing entities, fiscal agents, and managed care entities must provide the following federally required disclosures to the Department:

1. The name and address of any entity (individual or corporation) with an ownership or control interest in the disclosing entity, fiscal agent, or managed care entity having direct or indirect ownership of 5 percent or more. The address for corporate entities must include, as applicable, primary business address, every business location, and P.O. Box address.

2. For individuals: Date of birth and Social Security number

3. For business entities: Other tax identification number for any entity with an ownership or control interest in the disclosing entity (or fiscal agent or managed care entity) or in any subcontractor in which the disclosing entity (or fiscal agent or managed care entity) has a 5 percent or more interest.

4. Whether the entity (individual or corporation) with an ownership or control interest in the disclosing entity (or fiscal agent or managed care entity) is related to another person with ownership or control interest in the disclosing entity as a spouse, parent, child, or sibling; or whether the entity (individual or corporation) with an ownership or control interest in any subcontractor in which the disclosing entity (or fiscal agent or managed care entity) has a 5 percent or more interest is related to another person with ownership or control interest in the disclosing entity as a spouse, parent, child, or sibling.

5. The name of any other disclosing entity (or fiscal agent or managed care entity) in which an owner of the disclosing entity (or fiscal agent or managed care entity) has an ownership or control interest.

6. The name, address, date of birth, and Social Security Number of any managing employee of the disclosing entity (or fiscal agent or managed care entity).

7. The identity of any person who has an ownership or control interest in the provider, or is an agent or managing employee of the provider who has been convicted of a criminal offense related to that person's involvement in any program under Medicare, Medicaid, Children's Health Insurance Program or the Title XX services since the inception of these programs.

8. Full and complete information about the ownership of any subcontractor with whom the provider has had business transactions totaling more than $25,000 during the 12 month period ending on the date of the request; and any significant business transactions between the provider and any wholly owned supplier, or between the provider and any subcontractor, during the 5-year period ending on the date of the request.

8.125.15.B. Disclosures from any provider or disclosing entity are due at any of the following times:

1. Upon the provider or disclosing entity submitting the provider application.

2. Upon the provider or disclosing entity executing the provider agreement.

3. Upon request of the Department during re-validation.

4. Within 35 days after any change in ownership of the disclosing entity.

8.125.15.C. Disclosures from fiscal agents are due at any of the following times:

1. Upon the fiscal agent submitting its proposal in accordance with the State's procurement process.

2. Upon the fiscal agent executing a contract with the State.

3. Upon renewal or extension of the contract.

4. Within 35 days after any change in ownership of the fiscal agent.

8.125.15.D. Disclosures from managed care entities are due at any of the following times:

1. Upon the managed care entity submitting its proposal in accordance with the State's procurement process.

2. Upon the managed care entity executing a contract with the State.

3. Upon renewal or extension of the contract.

4. Within 35 days after any change in ownership of the managed care entity.

8.125.15.E. The Department will not reimburse any claim from any provider or entity or make any payment to an entity that fails to disclose ownership or control information as required by 42 CFR 455.104. The Department will not reimburse any claim from any provider or entity or make any payment to an entity that fails to disclose information related to business transactions as required by 42 CFR 455.105 beginning on the day following the date the information was due and ending on the day before the date on which the information was supplied. Any payment made to a provider or entity that is not reimbursable in accordance with this section shall be considered an overpayment.

8.125.15.F. The Department may terminate the agreement of any provider or entity or deny enrollment of any provider that fails to disclose information when requested or required by 42 CFR 455.100-106.

THIS PAGE NOT FOR PUBLICATION

Title of Rule:	Revision to the Medical Assistance Health Programs Benefits Management Rule Concerning Family Planning, Section 8.730
Rule Number:	MSB 14-10-15-B
Division / Contact / Phone:	Health Programs Benefits and Operations / Melanie Reece / x3693

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 14-10-15-B, Revision to the Medical Assistance Health Programs Benefits Management Rule Concerning Family Planning, Section 8.730
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) 8.730, 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). <Select One>

PUBLICATION INSTRUCTIONS*

Replace current text at §8.730 through the end of §8.730.3.F with new text provided beginning at §8.730 through the end of §8.730.7.A.
This revision is effective 07/01/2015

*to be completed by MSB Board Coordinator

THIS PAGE NOT FOR PUBLICATION

Title of Rule:	Revision to the Medical Assistance Health Programs Benefits Management Rule Concerning Family Planning, Section 8.730
Rule Number:	MSB 14-10-15-B
Division / Contact / Phone:	Health Programs Benefits and Operations / Melanie Reece / x3693

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: remove abortion services which will be placed in its own rule under 8.770; remove hysterectomy and place it in the new women's health rule under 8.731; and reformat the existing family planning services rule.

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) of the Social Security Act, codified at 42 U.S.C. 1396d(a)(2); 42 CFR Part 50, Subpart B; 42 CFR § 440.230.

4. State Authority for the Rule:

   25.5-1-301 through 25.5-1-303, C.R.S. (2014);
   25.5-10-231 and 25.5-10-232, C.R.S. (2014)

Initial Review	**04/10/2015**	Final Adoption	**05/08/2015**
Proposed Effective Date	**07/01/2015**	Emergency Adoption	

DOCUMENT #09

THIS PAGE NOT FOR PUBLICATION

Title of Rule:	Revision to the Medical Assistance Health Programs Benefits Management Rule Concerning Family Planning, Section 8.730
Rule Number:	MSB 14-10-15-B
Division / Contact / Phone:	Health Programs Benefits and Operations / Melanie Reece / x3693

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 Family Planning 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 rule will provide guidance to clients and providers regarding benefit coverage. For example, this rule explicitly and clearly defines the requirements for giving informed consent for sterilization. Given the nature of this procedure, it is important that clients and providers are fully aware of the nature and consequences associated with this procedure.

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.

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.

8.730 FAMILY PLANNING SERVICES

8.730.1 Definitions

Family Planning Services mean those services provided to individuals of child-bearing age, including sexually active minors, with the intent to delay, prevent, or plan for a pregnancy. Family Planning Services may include physical examinations, diagnoses, treatments, counseling, supplies (including all FDA-approved contraceptives, with the exception of spermicides and female condoms), prescriptions, and follow-up services.

Institutionalized Individual means an individual who is (a) involuntarily confined or detained, under a civil or criminal statute, in a correctional or rehabilitative facility (including a mental hospital or other facility) for the care and treatment of a mental illness; or (b) confined, under a voluntary commitment in a mental hospital or other facility, for the care and treatment of a mental illness.

Mentally Incompetent Individual means an individual who has been declared mentally incompetent by a federal, state, or local court for any purpose, unless the individual has been declared competent for purposes that include the ability to consent to sterilization.

Sterilization means any medical procedure, treatment, or operation (except for a hysterectomy) for the purpose of rendering an individual permanently incapable of reproducing and that requires informed consent.

8.730.2 Client Eligibility

8.730.2.A. All Medicaid clients of childbearing age are eligible for family planning services.

8.730.3 Provider Eligibility

8.730.3.A. The following Medicaid enrolled providers may offer family planning services:

1. Physician
2. Osteopath
3. Nurse Practitioner
4. Certified Nurse-Midwife
5. Physician Assistant
6. Clinical Nurse Specialist
7. Certified Registered Nurse Anesthetist
8 .Family Planning Clinic
9 .Public Health Agency
10 .Non-physician Practitioner Group

8.730.3.B. Eligible places of service include:

1. Office
2. Clinic
3. Family Planning Clinic
4. Public Health Agency
5. Home
6. School
7. School-based Health Center
8. Federally Qualified Health Center
9. Rural Health Center
10. Hospital
11. Ambulatory Surgery Center

8.730.4 Covered Services

8.730.4.A. Office Visits

1. A comprehensive, annual family planning visit is covered only once per state fiscal year, no less than ten months apart, and may include: physical examinations, diagnoses, treatments, counseling, supplies, contraceptives and prescriptions. Additional follow-up visits and services are covered when medically necessary.

8.730.4.B. Sterilization

1. Sterilization is covered for a client who is:
    a. 21 years of age or older;
    b. Is mentally competent;
    c. Is not institutionalized; and,
    d. Has given written informed consent where at least one of the following conditions apply:
        i. At least 30 days, but no more than 180 days have passed between the date of informed consent and the date of sterilization;
        ii. In the case of premature delivery, the informed consent must have been given at least 30 days before the expected date of delivery and at least 72 hours have passed since the date of informed consent; or
        iii. In the case of emergency abdominal surgery, at least 72 hours have passed since the date of informed consent.

2. A client with an intellectual and developmental disability is protected under C.R.S. 25.5-10-231 and C.R.S. 25.5-10-232 with respect to sterilization rights and competency to give consent for sterilization.

    a. The above statutes are applicable except for clients aged between eighteen and twenty-one years. For any signed sterilization consent to be considered valid, any client, including those with an intellectual and developmental disability, is required to be 21 years or older.

8.730.4.C. Contraceptives

1. All FDA-approved contraceptives, including emergency contraceptives, are a covered benefit (with the exclusion of spermicides and female condoms).

8.730.5 Documentation

8.730.5.A. Services

1. For family planning services and supplies, the provider shall document the intention of the service as it relates to delay, prevention, or for planning a pregnancy.

8.730.5.B. Sterilization Consent Form

1. Submission of a valid signed sterilization consent form is required prior to reimbursement. The sterilization consent form shall be signed and dated by:

    a. The client to be sterilized;

    b. The interpreter, if one was provided;

    c. The person who obtained the consent; and

    d. The physician who will perform the sterilization procedure.

2. If an interpreter is provided, the interpreter shall, by signing the consent form, certify that he or she translated the information presented orally, read the consent form and explained its contents to the client, and that, to the best of the interpreter's knowledge, the client understood the information provided.

3. The person who obtained the consent shall, by signing the consent form, certify that he or she provided the client with all of the information set forth in 8.730.5.B.6. and, to the best of his or her knowledge, the client appeared mentally competent, and knowingly and voluntarily consented to be sterilized.

4. The physician performing the sterilization shall, by signing the consent form, certify that:

    a. He or she provided the client with all of the information set forth in 8.730.5.B.6;

    b. To the best of his or her knowledge the client appeared mentally competent, and knowingly and voluntarily consented to be sterilized;

    c. Except in the case of premature delivery or emergency abdominal surgery, the physician shall further certify that at least 30 days but less than 180 days have passed between the date of the client's signature on the consent form and the date upon which the sterilization was performed;

d. In the case of premature delivery or emergency abdominal surgery performed within 30 days of consent, the physician shall certify that the sterilization was performed less than 30 days, but more than 72 hours, after informed consent was obtained because of premature delivery or emergency abdominal surgery; and,

e. In the case of premature delivery, the physician shall state the expected date of delivery, or in the case of emergency abdominal surgery, the physician shall describe the emergency.

5. Informed consent for sterilization cannot be obtained when a client is:

a. In labor or childbirth;

b. Seeking to obtain or obtaining an abortion; or

c. Under the influence of substances that impair the individual's decision making capabilities.

6. Informed consent is valid only when the client has been offered and given:

a. Answers to any questions concerning the procedure;

b. A copy of the consent form;

c. A copy of the signed consent form; and,

d. Orally provided the following information:

i. The ability to withhold or withdraw consent to the procedure at any time before the sterilization without affecting the right to future care or treatment and without loss or withdrawal of any federally funded program benefits to which the client might otherwise be entitled.

ii. A description of available alternative methods of family planning and birth control.

iii. That the sterilization procedure is considered to be irreversible.

iv. An explanation of the specific sterilization procedure to be performed.

v. A description of the discomforts and risks that may accompany or follow the sterilization procedure including an explanation of the type and possible effects of any anesthetic to be used.

vi. A description of the benefits or advantages that may be expected as a result of the sterilization.

vii. That the sterilization will not be performed for at least 30 days but less than 180 days from consent except under the circumstances specified in 8.730.4.B.1.d.ii, or 8.730.4.B.1.d.iii.

7. The consent is not valid unless the information specified in 8.730.5.B.6. is effectively communicated to any client who is blind, deaf, or otherwise disabled.

8. An interpreter shall be provided if the client to be sterilized does not understand the language used on the consent form or the language used by the person obtaining consent.

9. The client to be sterilized may have a witness of his or her choice present when consenting to the procedure.

8.730.5. Non-covered Services

8.730.5.A. The following services are not benefits for Medicaid clients:

1. Spermicide

2. Female Condoms

3. Sterilization reversal

4. Infertility treatment and testing

8.730.6. Prior Authorization

8.730.6.A. Prior authorization is not required for family planning services.

8.730.7. Reimbursement

8.730.7.A. Reimbursement for family planning services requires an appropriate Family Planning diagnostic code along with use of the family planning (FP) modifier.

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Office of the Attorney General

Tracking number: 2015-00185

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 05/08/2015

10 CCR 2505-10

MEDICAL ASSISTANCE - STATEMENT OF BASIS AND PURPOSE, AND RULE HISTORY

The above-referenced rules were submitted to this office on 05/12/2015 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.

May 21, 2015 16:46:38

Frederick R. Yarger

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

Permanent Rules Adopted

Department

Department of Human Services

Agency

Social Services Rules (Staff Manual Volume 7; Child Welfare, Child Care Facilities)

CCR number

12 CCR 2509-10

Rule title

12 CCR 2509-10 EARLY INTERVENTION PROGRAM 1 - eff 07/01/2015

Effective date

07/01/2015

Tracking# 2015-00178
FA/P 5/8/15, eff. 7/1/15

[I:/15011401_Submittal.doc]

(12 CCR 2509-1)

[Instructions: insert the following paragraph at the end of the Statement of Basis and Purpose]

Revisions to Sections 7.900 – 7.901, 7.914, and 7.920 - 7.940 were final adoption following publication at the 5/8/2015 State Board meeting (Rule-making# 15-1-14-1), with an effective date of 7/1/2015. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Strategic Communications and Legislative Relations, State Board Administration.

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(12 CCR 2509-10)

[Instructions: replace the following sections.]

7.900 EARLY INTERVENTION PROGRAM [Rev. eff. 7/1/15]

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 701, et seq.

   2. The Colorado Revised Statutes (C.R.S.) Title 10, Article 16, Sections 102(46) and 104(1.3).

   3. The Colorado Revised Statutes (C.R.S.) Title 22, Article 20, Sections 103 and 118.

   4. The United States Code (U.S.C.), Title 20, Parts 1232, as amended January 2, 2013, 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), 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.gpo.gov. 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.gpo.gov. 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.gpo.gov. 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 and 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 inter-agency 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. 7/1/15]

As used in these rules and regulations, unless the context requires otherwise:

"Abuse or child abuse and/or neglect" is defined in Section 19-1-103(1), C.R.S.

"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 in 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 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 Department-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.

"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 that is the best fit to address the child and family outcomes as identified 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.

"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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[Instructions: replace the following section.]

7.914 DATA COLLECTION [Rev. eff. 7/1/15]

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 data system, data entry requirements and timelines, and report information; and,

2. Ensure that each staff who enters data into the statewide 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 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 data system from the date of the referral and tracked through eligibility or ineligibility and exit from Early Intervention Services.

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[Instructions: replace the following sections.]

7.920 CHILD IDENTIFICATION [Rev. eff. 7/1/15]

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. An evaluation is conducted by a multidisciplinary evaluation team 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 shall be:

1) Conducted by qualified personnel trained to utilize a Department-approved family assessment tool, that is available on the Early Intervention Colorado website at www.eicolorado.org; 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 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 [Rev. eff. 7/1/15]

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 service, 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. 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,

10. Inform a parent of available advocacy services; and,

11. Facilitate development of the transition to preschool special education services or other services for a toddler approaching three (3) years of age; and,

12. Assist a parent with dispute resolution regarding early intervention services, if needed; and,

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 [Rev. eff. 7/1/15]

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 ad defined ins 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 and 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. Persons 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.

****

CYNTHIA H. COFFMAN
Attorney General

DAVID C. BLAKE
Chief Deputy Attorney General

MELANIE J. SNYDER
Chief of Staff

FREDERICK R. YARGER
Solicitor General

STATE OF COLORADO
DEPARTMENT OF LAW

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Office of the Attorney General

Tracking number: 2015-00178

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

State Board of Human Services: #15-1-14-1 Revisions of Early Intervention Program Rules

on 05/08/2015

12 CCR 2509-10

EARLY INTERVENTION PROGRAM

The above-referenced rules were submitted to this office on 05/15/2015 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.

May 26, 2015 11:38:47

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 05/08/2015

Effective date

05/08/2015

THIS PAGE NOT FOR PUBLICATION

Title of Rule:	Revision to the Medical Assistance Rule Concerning Hospital Provider Fees Collection and Disbursement, Section 8.2000
Rule Number:	MSB 15-04-03-A
Division / Contact / Phone:	Special Financing / Matt Haynes / 303.866.6305

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 15-04-03-A, Revision to the Medical Assistance Rule Concerning Hospital Provider Fees Collection and Disbursement, Section 8.2000
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) 8.2000, 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: 5/8/15
   Is rule to be made permanent? (If yes, please attach notice of hearing). Yes

PUBLICATION INSTRUCTIONS*

Replace current text at §8.2003.A.3 with the new text provided.
Replace current text at the unnumbered paragraph following §8.2004.E.1. with the new text provided.
All text indicated in blue is for clarification purposes only and should not be changed.
This revision is effective 05/08/2015

*to be completed by MSB Board Coordinator

THIS PAGE NOT FOR PUBLICATION

Title of Rule:	Revision to the Medical Assistance Rule Concerning Hospital Provider Fees Collection and Disbursement, Section 8.2000
Rule Number:	MSB 15-04-03-A
Division / Contact / Phone:	Special Financing / Matt Haynes / 303.866.6305

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).

Under recommendation of the Hospital Provider Fee Oversight and Advisory Board (OAB), the proposed rule revisions include changes to fees assessed upon hospital providers and payments to hospital providers.

The Colorado Health Care Affordability Act [section 25.5-4-402.3, C.R.S. (2014)] instructs the Department to charge hospital provider fees and obtain federal Medicaid matching funds. The hospital provider fee is the source of funding for supplemental Medicaid payments to hospitals and payments associated with the Colorado Indigent Care Program (CICP). It is also the source of funding for the expansion of eligibility for Medicaid adults to 133% of the federal poverty level (FPL), the expansion of the Child Health Plan Plus (CHP+) to 250% FPL implemented, the implementation of a Medicaid Buy-In Program for working adults with disabilities up to 450% of FPL and children with disabilities up to 300% of the FPL, and to fund 12 months of continuous eligibility for Medicaid children.

The proposed rule updates the hospital provider fee and payment calculations in accordance with the recommendation of the OAB. The Department brought emergency rule changes to the MSB in January 2015 to allow the Department to collect sufficient fees from hospitals to fund the health coverage expansions and hospital payments to comply with state statute and the Medicaid State Plan agreement with the Centers for Medicare and Medicaid Services, and to cover the Department's administrative costs. Subesquent to the adoption of those rules, significant data errors were discovered that required revisions to the provider fee and supplemental payment calculations, and revisions to the State Plan submission. The Hospital Provider Fee Oversight and Advisory Board (OAB) approved the revisions unanimously at its March 17, 2015 meeting. The proposed rule revisions are necessary to reflect the approved revisions to the calculations and to comply with the proposed State Plan amendment in order to ensure continuing health care coverage for the Medicaid and CHP+ expansions funded by hospital provider fees and access to discounted health care services for CICP clients.

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:

The Colorado Health Care Affordability Act [section 25.5-4-402.3, C.R.S. (2014)] instructs the Department to charge hospital provider fees and obtain federal Medicaid matching funds. The hospital provider fee is the source of funding for supplemental Medicaid payments to hospitals and payments associated with the Colorado Indigent Care Program (CICP). It is also the source of funding for the expansion of eligibility for Medicaid adults to 133% of the federal poverty level (FPL), the expansion of the Child Health Plan Plus (CHP+) to 250% FPL implemented, the implementation of a Medicaid Buy-In Program for working adults with disabilities to 450% of FPL and children with disabilities up to 300% of the FPL, and to fund 12 months of continuous eligibility for Medicaid children.

The Department brought emergency rule changes to the MSB in January 2015 to allow the Department to collect sufficient fees from hospitals to fund the health coverage expansions and hospital payments to comply with state statute and the Medicaid State Plan agreement with the Centers for Medicare and Medicaid Services, and to cover the Department's administrative costs. Subesquent to the adoption of those rules, significant data errors were discovered that required revisions to the provider fee and supplemental payment calculations, and revisions to the State Plan submission. The Hospital Provider Fee Oversight and Advisory Board (OAB) approved the revisions unanimously at its March 17, 2015 meeting. The proposed rule revisions are necessary to reflect the approved revisions to the calculations and to comply with the proposed State Plan amendment in order to ensure continuing health care coverage for the Medicaid and CHP+ expansions funded by hospital provider fees and access to discounted health care services for CICP clients. The timeline to implement the proposed model requires emergency rule-making in order to ensure that the regulatory framework is in place to allow sufficient time to reconcile to the proposed model and to collect the necessary fees in order to ensure coverage for the expansion populations in the stae fiscal year.

3. Federal authority for the Rule, if any:

   42 CFR Section 433.68

4. State Authority for the Rule:

   25.5-1-301 through 25.5-1-303, C.R.S. (2013);
   Section 25.5-4-402.3, C.R.S. (2014)

THIS PAGE NOT FOR PUBLICATION

Title of Rule:	Revision to the Medical Assistance Rule Concerning Hospital Provider Fees Collection and Disbursement, Section 8.2000
Rule Number:	MSB 15-04-03-A
Division / Contact / Phone:	Special Financing / Matt Haynes / 303.866.6305

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.

Colorado hospitals bear the cost of the provider fee, but also benefit from increased reimbursements made possible through provider fee funding. Low-income persons benefit from the expanded Medicaid and Child Health Plan Plus (CHP+) eligibility.

In regard to the Hospital Quality Incentive Payment, Colorado hospitals will benefit from the receipt of supplemental provider fee payments based on performance on measures related to the quality of care provided. Medicaid clients benefit to the extent that the supplemental payments, as well as quality measurement and reporting activities, lead to improved quality of care and health outcomes.

2. To the extent practicable, describe the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

For FFY 2014-15, hospitals will pay approximately $688.5 million in fees, which will generate nearly $1.4 billion in federal funds to Colorado. Hospitals will receive approximately $1.2 billion in payments resulting in increased reimbursement for care provided to Medicaid and CICP patients of approximately $200 million.

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.

While there are administrative costs associated with implementation of the Colorado Health Care Affordability Act, all such costs are covered by provider fees collected; no state General Fund is used.

4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

If no action is taken, the Department will not be in compliance with the recommendation of the OAB from its March 17, 2015 meeting and will not be in compliance with the proposed Medicaid State Plan agreement with the Centers for Medicare and Medicaid Services.

5. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

The state does not currently have the resources to fund the hospital payments and coverage expansions under the Colorado Health Care Affordability Act. The Department began collecting fees from hospitals in April 2010, after the rules were established and federal approval was obtained.

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 alternatives were considered. These rules are necessary for the Department to comply with the Colorado Health Care Affordability Act under section 25.5-4-402.3, C.R.S.

8.2003: HOSPITAL PROVIDER FEE

8.2003.A. OUTPATIENT SERVICES FEE

1. Federal requirements. The Outpatient Services Fee is subject to federal approval by CMS. The Department shall demonstrate to CMS, as necessary for federal financial participation, that the Outpatient Services Fee is in compliance with 42 U.S.C. §§ 1396b(w), 1396b(w)(3)(E), and 1396b(w)(4).

2. Exempted hospitals. Psychiatric Hospitals, Long Term Care Hospitals and Rehabilitation Hospitals are exempted from the Outpatient Services Fee.

3. Calculation methodology. The Outpatient Services Fee is calculated on an annual basis as 1.9447% of total hospital outpatient charges. High Volume Medicaid and CICP Hospitals' Outpatient Services Fee is discounted by 0.84%.

8.2004: SUPPLEMENTAL MEDICAID AND DISPROPORTIONATE SHARE HOSPITAL PAYMENTS

8.2004.E. UNCOMPENSATED CARE HOSPITAL SUPPLEMENTAL MEDICAID PAYMENT

1. Qualified hospitals. Hospitals that are not Psychiatric Hospitals, Long Term Care Hospitals, and Rehabilitation Hospitals shall not receive this payment.

Calculation methodology for payment. For each qualified hospital with twenty-five or fewer beds, the annual payment equals the hospital's percentage of beds compared to total beds for all qualified hospitals with twenty-five beds or fewer multiplied by thirty three million five hundred thousand dollars ($33,500,000). For each qualified hospital with greater than twenty-five beds, the annual payment equals the hospital's percentage of Uninsured Costs compared to total Uninsured Costs for all qualified hospitals with greater than twenty-five beds multiplied by eighty one million nine hundred eighty thousand one hundred seventy six dollars ($81,980,176).

COLORADO
Department of Health Care Policy & Financing
Medical Services Board

MAY 2015 EMERGENCY JUSTIFICATION FOR MEDICAL ASSISTANCE RULES ADOPTED AT THE MAY 8, 2015 MEDICAL SERVICES BOARD MEETING

MSB 15-04-03-A Revision to the Medical Assistance Rule Concerning Hospital Provider Fees Collection and Disbursement, Section 8.2000

To comply with state or federal law or federal regulation.

The Colorado Health Care Affordability Act [section 25.5-4-402.3, C.R.S. (2014)] instructs the Department to charge hospital provider fees and obtain federal Medicaid matching funds. The hospital provider fee is the source of funding for supplemental Medicaid payments to hospitals and payments associated with the Colorado Indigent Care Program (CICP). It is also the source of funding for the expansion of eligibility for Medicaid adults to 133% of the federal poverty level (FPL), the expansion of the Child Health Plan Plus (CHP+) to 250% FPL implemented, the implementation of a Medicaid Buy-In Program for working adults with disabilities to 450% of FPL and children with disabilities up to 300% of the FPL, and to fund 12 months of continuous eligibility for Medicaid children.

The Department brought emergency rule changes to the MSB in January 2015 to allow the Department to collect sufficient fees from hospitals to fund the health coverage expansions and hospital payments to comply with state statute and the Medicaid State Plan agreement with the Centers for Medicare and Medicaid Services, and to cover the Department's administrative costs. Subsequent to the adoption of those rules, significant data errors were discovered that required revisions to the provider fee and supplemental payment calculations, and revisions to the State Plan submission. The Hospital Provider Fee Oversight and Advisory Board (OAB) approved the revisions unanimously at its March 17, 2015 meeting. The proposed rule revisions are necessary to reflect the approved revisions to the calculations and to comply with the proposed State Plan amendment in order to ensure continuing health care coverage for the Medicaid and CHP+ expansions funded by hospital provider fees and access to discounted health care services for CICP clients. The timeline to implement the proposed model requires emergency rule-making in order to ensure that the regulatory framework is in place to allow sufficient time to reconcile to the proposed model and to collect the necessary fees in order to ensure coverage for the expansion populations in the state fiscal year.

CYNTHIA H. COFFMAN
Attorney General

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Office of the Attorney General

Tracking number: 2015-00245

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 05/08/2015

10 CCR 2505-10

MEDICAL ASSISTANCE - STATEMENT OF BASIS AND PURPOSE, AND RULE HISTORY

The above-referenced rules were submitted to this office on 05/08/2015 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.

May 21, 2015 16:47:00

Frederick R. Yarger

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

Terminated Rulemaking

Department

Department of Revenue

Agency

Division of Gaming - Rules promulgated by Gaming Commission

CCR number

1 CCR 207-1

Tracking number

2015-00157

Termination date

05/21/2015

Reason for termination

The Gaming Commission voted to make no changes to gaming tax rates.

Nonrulemaking Public Notices and other Miscellaneous Rulemaking Notices

Department

Department of Public Health and Environment

Agency

Water Quality Control Commission (1002 Series)

COLORADO
Water Quality
Control Commission
Department of Public Health & Environment

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

SUBJECT:

For consideration of revisions to the Water Pollution Control Revolving Fund Rules, Regulation #51 (5 CCR 1002-51) and the Drinking Water Revolving Fund Rules, Regulation #52 (5 CCR 1002-52), and revisions to the corresponding FY 2015 Intended Use Plans.

The revisions to Regulation #51 proposed by the Water Quality Control Division (division) as staff to the commission, along with a proposed Statement of Basis, Specific Statutory Authority and Purpose, are attached to this notice as Exhibit 1. The revisions to Regulation #52 proposed by the division as staff to the commission, along with a proposed Statement of Basis, Specific Statutory Authority and Purpose, are attached to this notice as Exhibit 2. The revisions to the FY 2015 Water Pollution Control Revolving Fund and State Domestic Wastewater Treatment Grant Intended Use Plan are attached to this notice as Exhibit 3. The revisions to the FY 2015 Drinking Water Revolving Fund and State Drinking Water Grant Fund Intended Use Plan are attached to this notice as Exhibit 4. Any alternative proposals related to the revisions proposed in Exhibits 1 through 4, and developed in response to those proposed revisions, will also be considered.

HEARING SCHEDULE:

DATE:	Monday, August 10, 2015
TIME:	10:00 a.m.
PLACE:	Florence Sabin Conference Room Department of Public Health and Environment 4300 Cherry Creek Drive South Denver, CO 80246

PUBLIC PARTICIPATION ENCOURAGED:

The commission encourages all interested persons to provide their opinions or recommendations regarding the matters to be addressed in this rulemaking and administrative action hearing, either orally at the hearing or in writing prior to or at the hearing. Although oral testimony from those with party status (see below) and other interested persons will be received at the hearing, the time available for such oral testimony may be limited. The commission requests that all interested persons submit to the commission any available information that may be relevant in considering the noticed proposals.

Written submissions prior to the hearing by interested members of the public that do not have party status are encouraged. In order to be distributed to the commission for review prior to the hearing, such submissions need to be received in the commission office or the Colorado Department of Public Health and Environment's (Department's) mail room by July 31, 2015. Written submissions received after this date will be distributed to commissioners at the hearing. However, for logistical reasons, the commission office cannot guarantee that electronic submissions received after 1:00 p.m. Friday, August 7, 2015 will be provided to commissioners. Interested persons wishing to submit comments or

other documents after that date and time should bring paper copies to the hearing and provide PDF versions to the commission office as soon as possible after the hearing.

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

PARTY STATUS:

Participation as a "party" to this hearing will require compliance with section 21.3(D) of the Procedural Rules, Regulation #21 (5 CCR 1002-21). It is not necessary to acquire party status in order to testify or comment. **For each request for party status, please provide the organization's name, a contact person, mailing address, phone number, and email address.** Written party status requests are due in the commission office on or before:

DATE: Tuesday, July 7, 2015
TIME: 5:00 p.m.

A single copy of the party status request may be transmitted as an email attachment to cdphe.wqcc@state.co.us, submitted by fax to 303-691-7702, mailed or otherwise conveyed so as to be received in the mail room of the Colorado Department of Public Health and Environment (department) no later than this deadline.

WRITTEN COMMENTS:

In view of the expedited nature of this rulemaking, no prehearing statements will be required. Those requesting party status and others interested in this proceeding are encouraged to provide written comments. Any such comments will be accepted at the hearing, although interested persons are encouraged to email or otherwise deliver a copy of their written comments to be received in the commission office by July 31, 2015 if feasible, so that they may be circulated to commission members for review prior to the hearing.

PREHEARING CONFERENCE:

No prehearing conference will be held for this rulemaking.

SPECIFIC STATUTORY AUTHORITY:

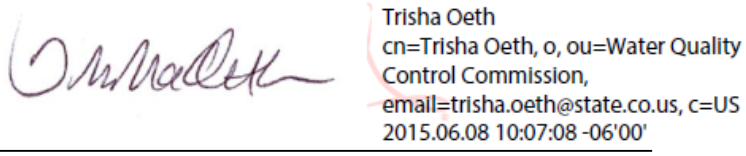
The provisions of sections 25-8-202(1)(e), (g) and (o) and sections 37-95-107.6(4) and .8(4), C.R.S. provide the specific statutory authority for consideration of the regulatory amendments proposed by this notice. Should the commission adopt the regulatory language as proposed in this notice or alternative amendments, it will also adopt, in compliance with section 24-4-103(4) C.R.S., an appropriate Statement of Basis, Specific Statutory Authority, and Purpose.

NOTIFICATION OF POTENTIAL MATERIAL INJURY TO WATER RIGHTS:

In accordance with section 25-8-104(2)(d), C.R.S., any person who believes that the actions proposed in this notice have the potential to cause material injury to his or her water rights is requested to so indicate in the party status request submitted. In order for this potential to be considered fully by the commission and the other agencies listed in the statute, persons must fully explain the basis for their claim in their prehearing statement which is due in the commission office on the date specified above. This explanation should identify and describe the water right(s), and explain how and to what degree the material injury will be incurred.

Dated this 8th day of June, 2015 at Denver, Colorado.

WATER QUALITY CONTROL COMMISSION



Trisha Oeth, Administrator

EXHIBIT 1

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

WATER QUALITY CONTROL COMMISSION

REGULATION NO. 51

WATER POLLUTION CONTROL REVOLVING FUND RULES

5 CCR 1002-51

	AMENDED:	March 8, 1999
	EFFECTIVE:	April 30, 1999
	AMENDED:	May 8, 2000
	EFFECTIVE:	June 30, 2000
	AMENDED:	May 10, 2004
	EFFECTIVE:	June 30, 2004
	AMENDED:	October 11, 2005
	EFFECTIVE:	November 30, 2005
	AMENDED:	August 11, 2008
	EFFECTIVE:	January 1, 2009
EMERGENCY	AMENDED:	March 9, 2009
	EFFECTIVE:	March 9, 2009
	AMENDED:	March 9, 2009
	EFFECTIVE:	April 30, 2009
	AMENDED:	May 14, 2012
	EFFECTIVE:	June 30, 2012
	AMENDED:	August 10, 2015
	EFFECTIVE:	September 30, 2015

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Water Quality Control Commission

5 CCR 1002-51

REGULATION NO. 51

WATER POLLUTION CONTROL REVOLVING FUND RULES

51.1 AUTHORITY AND PURPOSE OF THE WATER POLLUTION CONTROL REVOLVING FUND

The Water Pollution Control Revolving Fund ("WPCRF") was authorized by Congress in Title II and Title VI of the 1987 Amendments to the Clean Water Act ("Federal Act"). Additional provisions are provided in the Water Resources Reform and Development Act of 2014 ("WRRDA") and are amendments to Titles I, II, V, and VI of the Federal Act.

Senate Bill 50 (1988) authorized the State to participate in the WPCRF by amending the Colorado Water Resources and Power Development Authority Act, Title 37 of Article 95, C.R.S. ("Authority Act"); this allows the Colorado Water Resources and Power Development Authority ("Authority") to provide funds for the State's twenty percent match required by the Federal Act. §§ 37-95-103 and 37-95-107.6, C.R.S.

Sections 25-8-202 (1)(e) and (g), C.R.S., of the Colorado Water Quality Control Act ("State Act") also provide the Water Quality Control Commission ("Commission") and the Water Quality Control Division ("Division") with the authority to promulgate, implement, and administer this regulation.

The purpose of the WPCRF is to provide financial assistance to governmental agencies for the construction of any project as defined herein that appears on the Project Eligibility List included in the annual Intended Use Plan.

51.2 DEFINITIONS

See the State Act, the Authority Act, and the Federal Act for additional definitions.

. . . .

(19) "Section 212" - The section of the Federal Act that provides the statutory authority for programs funded by the WPCRF for the construction of publicly owned treatment works ("POTWs"). Projects eligible for funding under Section 212 may include, but are not limited to, the capital costs for wastewater collection and treatment, municipal stormwater projects, combined sewer overflow, sanitary sewer overflow, pipes, storage and treatment systems, green infrastructure, municipal landfill projects, water conservation and reclaimed water, energy conservation and efficiency, security, and decentralized wastewater treatment systems.

. . . .

51.6 PROCEDURES FOR ESTABLISHING THE PROJECTED LOAN LIST AND DISTRIBUTING FUNDS

. . . .

(5) In accordance with federal statutes, states are authorized to provide loans at or below market interest rates, including interest free loans, at terms not to exceed the lesser of 30 years and the projected useful life (as determined by the State) of the project to be financed with proceeds of the loan.

51.7 DISADVANTAGED COMMUNITIES

~~Under the Federal Act, states are authorized to provide "loans at or below market interest rates, including interest free loans, at terms not to exceed 20 years."~~

(1) The WPCRF may provide additional loan subsidies for governmental agencies that are determined to be "disadvantaged." The definition/criteria of a disadvantaged community and the nature of the loan subsidies to be made available thereto shall be recommended for inclusion in the IUP by the Division and the Authority in consultation with the DLG.

(2) While compiling projects on the Projected Loan List (utilizing the procedures listed in section 51.6 above), the Division will identify the community projects that qualify for assistance under the Disadvantaged Communities Program in accordance with the program definition and criteria.

51.8 PLANNING GRANTS ~~AND DESIGN~~ AND DESIGN / ENGINEERING GRANTS

The Division may provide planning grants ~~and design~~ and design / engineering grant assistance if funding is approved in the IUP according to section 51.3.

. . . .

PROPOSED

51.38 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE (AUGUST 10, 2015 RULEMAKING, EFFECTIVE SEPTEMBER 30, 2015)

Sections 25-8-202(1)(e) and (g); and section 37-95-107.6, C.R.S. provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with section 24-4-103(4), C.R.S., the following statement of basis and purpose.

BASIS AND PURPOSE

The Commission took action to modify Regulation #51 by: aligning the loan terms with the federal Water Resources Reform and Development Act (WRRDA); and revising the planning and design grant nomenclature to planning, design and engineering grants to align with the program grant terminology. The Commission adopted these revisions for three principal reasons:

1. To align the Colorado Water Pollution Control Revolving Fund eligible project types with WRRDA; and

2. To align the Colorado Water Pollution Control Revolving Fund loan terms with WRRDA; and

3. To clarify the grant terminology under the Colorado Water Pollution Control Revolving Fund (WPCRF) loan process.

Specific modifications to Regulation #51 on a section-by-section basis are described below.

Section 51.2 - Definitions – The Commission revised section 51.2(19) to add security and decentralized wastewater treatment systems as eligible project types.

Section 51.6 - Procedures – The Commission added section 51.6(5) to provide for financing terms the lesser of 30 years, or projected life of the financed project.

Section 51.7 - Disadvantaged Communities – The Commission revised section 51.7 to delete the loan duration terms which are addressed in Sections 51.3(2)(c), 51.6(5), and the IUP.

Section 51.8 – The Commission renamed and reworded the section to reflect the two grant programs being (1) Planning Grants and (2) Design and Engineering Grants.

EXHIBIT 2

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

WATER QUALITY CONTROL COMMISSION

DRINKING WATER REVOLVING FUND RULES

REGULATION NO. 52

5 CCR 1002-52

BOARD OF HEALTH

ADOPTED: October 18, 1995
EFFECTIVE: December 30, 1995
AMENDED: October 15, 1997
EFFECTIVE: November 30, 1997
AMENDED: April 15, 1998
EFFECTIVE: May 30, 1998
AMENDED: September 2004
EFFECTIVE: November 30, 2004

WATER QUALITY CONTROL COMMISSION

AMENDED: August 11, 2008
EFFECTIVE: January 1, 2009
EMERGENCY AMENDED: March 9, 2009
EFFECTIVE: March 9, 2009
AMENDED: March 9, 2009
EFFECTIVE: April 30, 2009
AMENDED: April 14, 2014
EFFECTIVE: May 30, 2014
AMENDED: August 10, 2015
EFFECTIVE: September 30, 2015

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

WATER QUALITY CONTROL COMMISSION

5 CCR 1002-52

REGULATION NO. 52

DRINKING WATER REVOLVING FUND RULES

52.1 AUTHORITY

In Senate Bill 95-083, the Colorado General Assembly created the Drinking Water Revolving Fund to provide financial assistance to certain drinking water projects in the State of Colorado. The fund is held and administered by the Colorado Water Resources and Power Development Authority (Authority), which is authorized to issue bonds to finance the program. Moneys in the fund may be used to provide financial assistance to projects included on a Project Eligibility List, which is part of the annual Intended Use Plan (IUP). Codified at sections 37-95-103 and 37-95-107.8, C.R.S., the statutes direct the Water Quality Control Commission (Commission) to submit additions and modifications to the Project Eligibility List annually for adoption by the General Assembly by Joint Resolution signed by the Governor. This regulation complies with 40 CFR part 35, subpart l, and provides for the Commission's approval of the Intended Use Plan including additions and modifications to the Project Eligibility List and the Projected Loan List.

The 1996 amendments to the federal Safe Drinking Water Act (SDWA) include authorization of a state revolving fund program similar to that included in the Clean Water Act for wastewater projects. The Drinking Water Revolving Fund established by Senate Bill 95-083 meets the requirements of the SDWA concerning revolving fund financing programs and allows for federal funding of Colorado's revolving fund financing program.

Section 25 1.5-203, C.R.S., also provides authority for this regulation.

52.2 DEFINITIONS

Section 11.3 of the Colorado Primary Drinking Water Regulations 5 CCR 1002-11, contains additional definitions that apply to this rule.

(1) "Beneficial Use" - The use of water treatment plant residuals to act as a soil conditioner or low grade fertilizer for the promotion of vegetative growth on land or to be used in commercial construction or industrial applications, and that meet the requirements of the state Biosolids Regulations.

(2) "Consolidation and Regionalization Project" - A proposed new construction or expansion of a drinking water supply system that will eliminate one or more existing water supply or treatment works. A letter of intent or a resolution adopted by the project participants must be provided to the Water Quality Control Division (Division) to guarantee the facilities will consolidate.

(3) "Governmental Agencies" - Departments, divisions, or other units of state government, special districts, water conservation districts, metropolitan water districts, conservancy districts, irrigation districts, municipal corporations, counties, cities and other political subdivisions, the United States or any agency thereof, and any agency, commission, or authority established pursuant to an interstate compact or agreement.

(4) "Health Hazard" - A situation where the Division has identified a waterborne disease outbreak primary maximum contaminant level (MCL) violation, violation of the Surface Water Treatment Rule (SWTR), a treatment technique violation, or significant deficiencies from an approved sanitary survey as defined in the Colorado Primary Drinking Water Regulations. Funding for projects that address an existing or potential health hazard must result in compliance with existing standards and regulations.

(5) "Pollution" - The man made, man induced, or natural alteration of the physical, chemical, biological, and radiological integrity of water.

(6) "Private Nonprofit Entity" – A private nonprofit corporation with perpetual duration and in good standing, which is formed and operated in Colorado pursuant to the requirements of the Colorado Revised Nonprofit Corporation Act, and which files federal and state tax returns as a nonprofit corporation.

(~~6~~7) "Project Eligibility List" - The list of projects eligible for financial assistance from the Authority through the Drinking Water Revolving Fund (DWRF), as adopted and ~~from time to time~~ modified in accordance with Section 37 95 107.8(4), C.R.S.

(~~7~~8) "Projected Loan List" – The list of projects that has been partially scored in accordance with the criteria described in the Intended Use Plan. This list represents those projects that are reasonably anticipated to receive a binding commitment for a loan in the DWRF program. Projects may be moved from the Project Eligibility List to the Projected Loan List at any time during the year.

(89) "Public Water System" (PWS) - A system for the provision to the public of piped water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals daily at least 60 days per year. 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; and

(b) Any collection or pretreatment storage facilities not under such control, which are used primarily in connection with such system.

(~~9~~10) "Source Water Protection" - Structural or nonstructural source water protection activities done in addition to area delineation and contaminant assessment.

(~~10~~11) "Sustainability Projects" - Projects and/or planning methodologies that promote sustainable drinking water systems through effective utility management and capacity development to improve the technical, financial, and managerial capacities of public water systems, as well as those that promote the conservation of natural resources, alternative approaches such as natural or "green" systems, innovative approaches and technologies, and the full life-cycle costs on infrastructure investments.

(~~11~~12) "Treatment Facilities" - Any devices or systems used in the collection, storage, treatment, transmission, diversion, or distribution of water intended for drinking water purposes.

(~~12~~13) "Water Conservation" - Any structural or nonstructural water conservation measure that achieves a reduction in water consumption for a PWS or a publicly owned treatment works. Structural measures shall include installation of interior low-flow plumbing fixtures that are distributed and/or installed by a governmental agency or private nonprofit entity or that are funded in whole or in part by the governmental agency or private nonprofit entity and water meters that are funded and owned by the governmental agency or private nonprofit entity. Nonstructural measures shall

include but are not necessarily limited to: incentives for previously installed low-flow fixtures, leak detection or infiltration/inflow programs, public awareness, public education, and incentive water service charges.

(~~13~~14) "Water Treatment Plant Residuals" - The accumulated solids, sludge, backwash water, and brine resulting from treatment of water for domestic use.

(~~14~~15) "Waterborne Disease Outbreak" - 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.

52.3 PURPOSE AND GENERAL POLICIES

(1) The purpose of the DWRF is to provide financial assistance to governmental agencies or private nonprofit entities for the construction of water projects for health and compliance purposes as defined above.

(2) An annual Intended Use Plan (IUP) is required by the SDWA to provide information about how the state will assist communities with their drinking water needs. Included in the IUP is the Project Eligibility List, which is a comprehensive list identifying governmental agencies and private nonprofit entities with drinking water project needs, and the Projected Loan List, identifying prioritized PWS projects that are eligible for financial assistance from the DWRF. The project priority system is intended to establish priorities for the DWRF to protect and improve the health, safety, quality and reliability of drinking water supplies in Colorado. It is the policy of the Commission to maintain and improve the existing high quality standards for drinking water in the State by providing accessibility to the DWRF.

(3) It is also the policy of the Commission to encourage consolidation and regionalization of drinking water systems and to promote source water protection and water conservation where practicable.

(4) It is the policy of the Commission to promote beneficial use of water treatment plant residuals created by treatment processes of a PWS.

(5) Any applicant for financial assistance from the DWRF must comply with policies and procedures and other requirements of the Authority.

(6) Each year, after a public notice and comment period, the Commission will schedule a public hearing for approval of the IUP. After considering all pertinent comments, the Commission shall approve the IUP and adopt additions and modifications to the Project Eligibility List no later than December 31st of each year. The Division will establish a date each year for finalizing its proposal to the Commission for the IUP and Projected Loan List. After that date, any requests for changes must be transmitted directly to the Commission.

(7) The Commission may amend the Project Eligibility List at any time throughout the year to include projects that it determines and declares to be emergency projects needed to prevent or address threats to public health or environment. In cases where the Commission determines the amendments will result in substantial changes to the Project Eligibility List, public notice and opportunity for comment on the proposed inclusion shall be provided.

(8) All loan project proponents shall submit applications by deadlines established in the annual IUP. If it is determined that the DWRF lacks sufficient funds to cover loans for all eligible projects that are ready to proceed within the funding year, projects will be funded per section 52.6.

52.4 INTENDED USE PLAN

The Division, in cooperation with the Division of Local Government (DLG) and the Authority, shall develop an annual IUP. ~~The Division shall recommend the IUP to the Commission each year for final agency action at a public hearing, and shall also provide for public notice and an opportunity to comment to comply with the SDWA.~~

The IUP shall include:

(1) The Project Eligibility List and Projected Loan List of projects.

(2) Descriptions of:

(a) Criteria and method used for distribution of funds

(b) Financial status of the DWRF program

(c) Short and long term goals of the DWRF program

(d) Amounts transferred between the DWRF and the Water Pollution Control Revolving Fund

(e) Set-aside activities and the percentage of the capitalization grant to be used

(f) How a state disadvantaged community program will be defined and utilized, if applicable; and

(3) Any other material that may be required by the SDWA.

52.5 <u>PROCEDURES FOR IDENTIFYING PROJECTS AND ESTABLISHING THE PROJECT ELIGIBILITY LIST</u>

(1) The Project Eligibility List is the comprehensive list of projects showing current and future needs of PWS improvements. Each year the Division shall, after consultation with interested persons and entities, including the DLG and Authority, review, update, and compile additions and modifications to the Project Eligibility List.

This Project Eligibility List shall be included in the IUP as an Appendix and, after a public notice and comment period, shall be presented to the Commission for final agency action at a public hearing.

(2) Eligible Project Criteria

The Project Eligibility List shall be comprised of four project types, which were developed to emphasize public health, drinking water quality, and compliance for Colorado PWSs. Projects on the Project Eligibility List will be classified by type A, B, C, or D below. No consideration will be given to governmental agencies <u>or private nonprofit entities</u> that have violations caused by poor operation and maintenance procedures or are under an administrative order for violating reporting requirements. All loan projects shall submit applications by deadlines established in the annual IUP.

(a) Type A includes the correction of a documented public health hazard as defined in the DWRF Rules.

(b) Type B includes those projects where the system is beyond the useful/design life and is in need of equipment replacement, rehabilitation or repair, in order to maintain compliance or further the public health protection goals of the SDWA.

(c) Type C includes those projects that will prevent or correct inadequate supply, storage and distribution issues. This also includes systems whose existing demand has exceeded current treatment plant design capacity.

(d) Type D includes those projects that implement source water protection activities or water conservation and efficiency infrastructure applications.

Note: The Project Types are determined based on the annual eligibility survey process to identify and quantify drinking water infrastructure needs across the state. This information is in no way related to project prioritization.

52.6 <u>PROCEDURES FOR ESTABLISHING THE PROJECTED LOAN LIST AND DISTRIBUTING FUNDS</u>

(1) The Projected Loan List shall be included in the IUP and, after a public notice and comment period, shall be presented to the Commission for final agency action at a public hearing. At minimum, the Projected Loan List shall identify:

(a) Name of the public water system

(b) Priority points and rank to the assigned project

(c) Project title and description

(d) Population of the PWS service area

(e) Amount of financial assistance requested

(f) Subsidy rate index

(g) Whether the project is within the fundable range

(2) The Division shall rank each project on the Projected Loan List based on the priority score of each project, and projects shall be funded in priority order. Detailed scoring mechanisms shall be established in the IUP based on the following parameters:

(a) Drinking water quality and public health

(b) Affordability

(c) Compliance with the Colorado Primary Drinking Water Regulations

(d) Source water protection and conservation

(e) Sustainability

(f) Readiness to proceed

(3) Projects on the Projected Loan List will be financed in priority order; however, exceptions for funding out of priority order shall be allowed for one or more of the following reasons:

(a) Certain governmental agencies <u>or private nonprofit entities</u> are not ready to proceed with the project;

(b) Certain governmental agencies or private nonprofit entities do not wish to participate in the DWRF, or they have received funding from other sources;

(c) Certain governmental agencies or private nonprofit entities had an emergency situation occur during the funding year; or

(d) Certain governmental agencies or private nonprofit entities are not approved for funding because of technical, financial, or managerial deficiencies. (The Division will attempt to work with the governmental entity or private nonprofit entity to resolve the issue through the capacity development program.)

(4) The Division shall identify the subsidy rate (if applicable) for each project on the Projected Loan List as identified in the Intended Use Plan.

52.7 DISADVANTAGED COMMUNITIES ~~PROCEDURES~~

(1) Under the SDWA, states are authorized to provide loans at or below market interest rates, including interest free loans, at terms not to exceed 30 years.

(2) The DWRF may provide additional loan subsidies for governmental entities or private nonprofit entities that are determined to be "disadvantaged." The definition/criteria of a disadvantaged community and the nature of the loan subsidies to be made available thereto shall be recommended for inclusion in the IUP by the Division and the Authority in consultation with the DLG.

(3) While compiling projects on the Projected Loan List (utilizing the procedures listed in Section 52.6 above), the Division will identify the community projects that qualify for assistance under the Disadvantaged Communities Program in accordance with program definition/criteria.

52.8 PLANNING GRANTS ~~AND DESIGN~~ AND DESIGN / ENGINEERING GRANTS

The Division may provide planning grants ~~and design~~ and design / engineering assistance as outlined and approved in the IUP, which shall be developed according to Section 52.4.

. . . .

PROPOSED

52.15 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE (AUGUST 10, 2015 RULEMAKING; EFFECTIVE DATE SEPTEMBER 30, 2015)

Sections 25-8-202(1)(g) and (o); and Section 37-95-107.8(4), C.R.S. provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with section 24-4-103(4) C.R.S. the following statement of basis and purpose.

BASIS AND PURPOSE

The Commission took action to modify Regulation #52 by: inserting private nonprofit entities where applicable throughout the document per Senate Bill 15-121; and revising the planning and design grant nomenclature to planning, design and engineering grants to align with the program grant terminology. The Commission adopted these revisions for two principal reasons:

1. To provide access to grant and loan funding for private nonprofit entities that is consistent with Senate Bill 15-121; and

2. To clarify the grant terminology under the Colorado Drinking Water Revolving Fund (DWRF) loan process.

Specific modifications to Regulation #52 on a section-by-section basis are described below.

Section 52.2 – Definitions – The Commission added definition (6) Private Nonprofit, and re-numbered definitions accordingly.

Section 52.2(7) – Definitions – Project Eligibility List - The Commission deleted “from time to time” to reflect a revision approved at its April 2014 hearing, which was inadvertently no reflected in the published regulation.

Sections 52.2(13); 52.3(1); 52.5(2); 52.6(3)(a),(b),(c), and (d); and 52.7 – Added the phrase “ or private nonprofit entity(ies)” following “governmental agency(ies)”.

Sections 52.3(2) – Added the phrase “ and private nonprofit entities” following “governmental agencies”.

Section 52.4 – Intended Use Plan – Deleted sentence “The Division shall recommend the IUP to the Commission each year for final agency action at a public hearing, and shall also provide for public notice and an opportunity to comment to comply with the SDWA.” This duplicates the information in 52.3 and is not necessary.

Section 52.7 – Disadvantaged Communities Procedures – “Procedures” was deleted from the heading to reflect a revision approved at the Commission’s April 2014 hearing, which was inadvertently not reflected in the published regulation.

Section 52.8 – The Commission renamed and reworded the section to reflect the two grant programs being (1) Planning Grants and (2) Design / Engineering Grants.

Colorado Water Pollution Control Revolving Fund
Intended Use Plan

2015

COLORADO
Department of Public Health & Environment

COLORADO WATER RESOURCES & POWER DEVELOPMENT AUTHORITY

COLORADO
Department of Local Affairs

Photo by Kavram

WQCC Approved: October 14, 2014 | Effective Date: January 1, 2015 | Amended: September 30, 2015

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Attachments

Appendices

Introduction to the Colorado WPCRF

The Water Pollution Control Revolving Fund (WPCRF) program provides financial assistance to governmental agencies for the construction of water projects that improve public and environmental health.

State Revolving Fund (SRF) Partnership

The SRF program is administered by three partnering agencies. Colorado statuestatute directs the Colorado Department of Public Health and Environment, Water Quality Control Division (division), the Colorado Water Resources and Power Development Authority (authority), and the Colorado Department of Local Affairs, Division of Local Government (DLG), to jointly operate the SRF. The SRF agencies administer the programs in alignment with the same common goals approved and supported by the Water Quality Control Commission (WQCC) and the authority board of directors (authority board).

SRF Agencies Responsibilities

Division	Authority	DLG
• Primacy agency. • Program administration. • Technical review and advisory. • Federal reporting.	• Financial structure. • Manages budgets and investments. • Disburses funds • Federal reporting. • Provides state match.	• Financial and managerial assistance to systems. • Coordinates funding collaboration via Funding Coordination Committee. • SRF outreach. • Conducts financial capacity assessments.

Program Mission

- Dedicated to providing affordable financing to systems by capitalizing on all available funds to address the state's priority water related public health and water quality issues.
- Actively target and allocate affordable resources to projects and initiatives that result in significant public health and environmental benefits, while maintaining perpetual, self-sustaining revolving loan fund programs.
- Manage the funds in a manner to provide benefits for current and future generations.

The SRF agencies also partner with the state Funding Coordination Committee (committee) which includes staff from the division, authority, DLG, Colorado Water Conservation Board, USDA Rural Development, Colorado Rural Water Association and Rural Community Assistance Corporation. The committee facilitates the use of collaborative capital financing when appropriate.

Intended Use Plans

The Intended Use Plan (IUP) is a federal Environmental Protection Agency (EPA) Capitalization Grant application requirement. The WPCRF IUP describes the SRF agencies plan to utilize funds to finance water quality infrastructure and support related program activities during calendar year 2015.

Long Term Goals

Colorado's long term goals aim to improve, maintain and/or restore water quality for priority water bodies. These goals include:

- Award SRF resources in accordance with the needs of Colorado citizens.
- Continue to implement and report the Clean Water State Revolving Fund Measurable Results Study to measure water quality improvements in receiving streams funded by the WPCRF.
- Support regional water quality management planning activities by development of water quality management plan strategies within the Statewide Water Quality Management Plan (SWQMP). Regional water quality management planning activities for point and nonpoint source management to protect and restore water is an important component of the effort to target WPCRF resources to the highest priority projects.
- Leverage funds in the WPCRF to maximize the amount of available funding for projected loans identified in the annual IUP's while continuing to reduce un-liquidated obligations.
- Maintain compliance with state and federal laws.
- Support nonpoint source site characterization and clean up through agreements between the division and the Department of Natural Resources, Division of Reclamation Mine and Safety.
- Provide nonpoint source control maintenance funding to protect the financial and environmental improvements made to date by the 319 Nonpoint Source Grant Program.
- Determine funding targets by obtaining surface water data sampling, analysis, and data assessment to identify watershed needs. Data goals include:
    - Conduct trend analyses on point and nonpoint sources of pollution to assess the need for reduction of those sources; and
    - Generate baseline water quality data for areas that have seen an increase in potential water quality impact (e.g., areas of population growth, areas where development may impact adjacent water quality through point sources or nonpoint sources).
- The State Funding Coordination Committee will strengthen its ability to identify and influence funding decisions to maximize use of all available State and Federal funds for the highest priority water related public health and environmental projects.
- Evaluate the current disadvantage community program to determine its alignment with the future LEAN state and whether or not the current definition meets the needs of Colorado communities.

Short Term Goals

Colorado's short-term goals align with the Water Pollution Control Program FY2013-2014 work plan:

- Complete the pre-qualification, engineering needs assessment, plans and specification self-certification criteria, and Handbook of Procedures (HOP) revisions for LEAN implementation.
- Attend conferences to provide program information to potential borrowers such as Colorado Rural Water Association, Colorado Municipal League, Special District Association's and the Colorado Water Congress's annual conferences.
- Maximize use of all WPCRF Capitalization Grant funds as directed by the federal Environmental Protection Agency (EPA).
- Identify, select, and implement an online integrated system that supports eligibility survey, application processes, and project management for Drinking Water Revolving Fund (DWRF) and

WPCRF that provides better program coordination and transparency between staff and stakeholders.

- Encourage borrowers to address discharges of pollutants to segments designated as impaired for such pollutants.
- The division will continue to document environmental benefits in EPA annual report.
- After receipt of the EPA allotment formula and guidance, the authority, in conjunction with the division, will submit an application for the annual capitalization grant funds in a manner that maximizes effective and timely use of funds while reducing un-liquidated obligations.

Water Pollution Control Revolving Fund Project List

Appendix A: The WPCRF Project Eligibility List is an inventory of projects that completed an eligibility survey in 2014. The eligibility survey is released annually to potential borrowers to capture 20 year capital improvement needs. Appendix A includes the name of the public entity, a description of the project, population, the estimated cost of the project, potential green infrastructure type and cost. Borrowers can add projects to Appendix A by completing an eligibility survey in June of each year. The list shows the 20 year construction needs for all identified eligible water quality projects including point source, non-point source (NPS), stormwater and source water assessment projects (SWAP).

Appendix B: The Project Priority / Fundable List is an inventory of projects that are eligible to receive or have recently received a loan from the WPCRF. This list includes anticipated loan terms, interest rate and type of loan, project description and green infrastructure categories. Projects in Appendix B have a projected construction start of no more than 18 months at the time of eligibility survey submission in June. Projects listed in Appendix B have been assigned a preliminary ranking score; however, this score is subject to change based on additional information from potential applicants and further prioritization. An active copy of Appendix B is maintained on the division's website.

Criteria, Methods and Evaluation for WPCRF Distribution

This section describes the application process including the prioritization criteria and authority board approval action, how policies apply to the allocation of loan proceeds, and the proposed Federal Fiscal Year (FFY) 2015 federal bill requirements, such as Green Project Reserve, principal forgiveness, Davis-Bacon Act, and American Iron and Steel, Architectural and Engineering procurement requirements; Generally Accepted Accounting Principles (GAAP); and project cost and effectiveness evaluation.

Loan applications are accepted seven times a year and are scored based on the ranking system found in **Attachment I: Colorado WPCRF Priority Scoring Model.**

Application, Prioritization and Approval

Applicants should coordinate with their assigned division project manager to determine the appropriate application submittal schedule to ensure board action and loan execution in a timely manner. The table below lists loan application deadlines, the type of loan, and the authority board meeting where the application is presented for approval.

Application Deadlines	Loan Type	Authority Board Meetings
January 15, 2015	Direct loan Leveraged loan (bond issue spring)	March
February 15, ~~2014~~2015	Direct loan	April
April 15, 2015	Direct loan	June
June 15, 2015	Direct loan Leveraged loan (bond issue fall)	August
August 15, 2015	Direct loan	October
October 15, 2015	Direct loan	December
November 15, 2015	Direct loan	January
All loans are subject to available funds and prioritization if needed		

The prioritization of applications will only occur if funding requests exceed available funds. **Attachment I: Colorado WPCRF Priority Scoring Model** will be used for the prioritization of applications. Loan applicants that do not prioritize may be considered at the next applicable loan application date at the applicant's request.

The SRF agencies may determine when applications be presented for approval at later authority board meetings depending on the volume of applications submitted at any one application deadline. Delays will not impact the applicant's prioritization ranking, but rather are meant to assist the SRF program workload balance. The determination will be based on the number of applications received, the applicant's timeframe for procuring funding and applicant's construction timeline.

All loan approvals are valid for 18 months. Prioritized and approved leveraged loans that do not execute their loan within 18 months will be reprioritized upon the next application deadline if necessary.

Allocation of Loan Proceeds

The SRF program follows policies set by the WQCC, authority board and SRF committee that dictate use of loan proceeds. Proceeds from loans and administration fees will be used to benefit communities through Planning and Design Grants and Disadvantaged Community Loans.

Capitalization Grant

For FFY15, and consistent with the 2014 appropriations language, the following requirements may apply to each state receiving WPCRF capitalization grants:

Green Project Reserve (GPR)

Historically, the capitalization grant agreement has required all SRF programs to direct a portion of their capitalization grant toward projects that address green infrastructure, water efficiency, energy efficiency, or other environmentally innovative activities. If the 2015 appropriation grant/guidance requires a GPR set-aside, the incentive below will be offered.

Projects that implement eligible green components equal to, or greater than, 20 percent of the total project cost will receive a reduced loan interest rate of 0 percent for up to a maximum of $2.5 million. Leveraged loan projects over $2.5 million will only be eligible for the reduced interest rate on the first $2.5 million. This incentive will only be offered until Colorado's GPR requirement has been met. These terms are subject to final action by the authority board and are not guaranteed terms until such time.

In the event that the 2015 appropriation guidance does not require additional GPR set-asides, the incentive will only be available for any remaining unobligated GPR funds.

The division has identified and included potential green projects in **Appendix A: Project Eligibility List** and **Appendix B: Project Priority / Fundable List**. These projects have been identified by *green type* and the estimated dollar amount. The division will utilize the definition for *categorical* and business case as provided by the EPA in the appropriation guidance. The division will review all business cases to determine GPR eligibility and post them on the division's website.

Principal Forgiveness Loans

In 2014, the WPCRF capitalization grant appropriation required that not less than 20 percent, but no more than 30 percent of funds shall be used by the state to provide additional subsidy to eligible recipients in the form of principal forgiveness, negative interest loans, grants, or a combination of these. However, this requirement only applied to the portion that exceeded $1 billion nationally, which represented approximately 8 percent ($915,523) of Colorado's 2014 capitalization grant.

The SRF programs are in the process of implementing the LEAN future state of the programs. Part of that process recommends use of the additional subsidy to be issued for the planning and engineering phase for SRF borrowers. This will provide the opportunity to assist with more planning and engineering monies to those who otherwise could not afford the project. Further, it will position projects to more quickly move into construction prior to appropriating additional SRF funding. Utilization of additional subsidies for planning and engineering purposes, the related criteria and terms will be set solely by the authority board. In the event this recommendation is not approved, the following will be applied for any available additional subsidy in 2015:

The state intends to distribute the additional subsidy in the form of principal forgiveness per **Attachment II: Application of Additional Subsidization**. In 2015, principal forgiveness for the WPCRF

will be distributed one time at the October 15, 2015 application deadline. The balance of the funds remaining beyond the required additional subsidy will be made available through loans without principal forgiveness.

Davis-Bacon and Related Acts

The requirements of Section 1450(e) of the federal SDWA (42 U.S.C. 300j-9(e)) regarding prevailing wage rates shall apply to the construction of treatment works carried out in whole or in part with assistance made available by a state revolving loan fund as authorized by section 1452 of the federal act (42 U.S.C. 300j (12)).

American Iron and Steel ~~(AIS)~~

On January 17, 2014 Congress passed the American Iron and Steel (AIS) requirement as part of the EPA Consolidated Appropriations Act for iron and steel products used in SRF projects for construction, alteration, maintenance or repair. Projects with loan execution and/or plans and specification approval on or after January 17, 2014 and prior to October 1, 2014, are subject to AIS.

The statute permits EPA to issue waivers for a case or category of cases where EPA finds (1) that applying these requirements would be inconsistent with the public interest, (2) iron and steel products are not produced in the US in sufficient and reasonably available quantities and of a satisfactory quality, or (3) inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent. States are allowed, on behalf of the borrower, to apply for waivers of the AIS requirement directly to EPA Headquarters. The WPCRF program will refer to compliance guidance issued by the EPA which can be found at the following website.

Debarment, Suspension, and Other Responsibility Matters

Recipients of EPA financial assistance agreements must provide certification that they are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency. The borrower must also ensure that any consultants, prime contractors, subcontractors, vendors, suppliers and manufacturers meet the requirements and are not excluded from covered transactions by any Federal department or agency .

Prohibition Against Participation of Listed Violating Facilities

Recipients of EPA financial assistance agreements and prime contractor must ensure that no portion of the work required by the prime contract will be performed in a facility listed on the Environmental Protection Agency list of violating facilities on the date when the contract is awarded. The work must comply with the Clean Air Act and Clean Water Act, and comply with clean air and clean water standards at the facilities in which the contract is being performed.

Disadvantaged Business Enterprise

Recipients of EPA financial assistance agreements are required to seek, and encouraged to utilize small, minority, and women-owned businesses for the procurement needs on projects designated for equivalency. The goal of the Disadvantaged Business Enterprise (DBE) program is to ensure nondiscrimination in the award of contracts.

Williams-Steiger Occupational Safety and Health Act

Recipients of EPA financial assistance agreements are required to ensure that all contractors working on the construction of projects are subject to the provisions of the Williams-Steiger Occupational Safety and Health Act of 1970.

Archeological Discoveries

Recipients of EPA financial assistance agreements are required to ensure that archeological discoveries are protected through the appropriate procedures.

Environmental Assessment – Compliance with the National Environmental Policy Act

All proposed actions funded by the State Revolving Fund program must undergo an environmental review process to assess compliance with the intent of the National Environmental Policy Act (NEPA) and State Review Process (SERP). The State, borrower, engineer, contractor and subcontractors have a duty to cooperate fully with federal and local governments and all other concerned public and private organizations, to use all practical means and measures including financial and technical assistance, and to create and maintain conditions under which man and nature can exist in productive harmony and promote the general welfare of the public.

Architectural and Engineering Services Procurement

Recipients of EPA financial assistance agreements are required to utilize qualification based selection methods for architectural and engineering (A/E) services on projects designated for equivalency. It is recommended that all projects pursuing State Revolving Fund loan funds to utilize a procurement methodology that meets or exceeds the A/E procurement requirements of 40 U.S.C. 1101 *et seq*.

Generally Accepted Accounting Principles

Recipients of EPA financial assistance agreements are required to maintain project accounts according to Generally Accepted Accounting Principles (GAAP). This provision requires borrowers to use standards relating to the reporting of infrastructure assets.

Fiscal Sustainability Criteria

Recipients of EPA financial assistance agreements are required to develop and implement a fiscal sustainability plan (FSP), or certify that it has developed and implemented such a plan by the conclusion of the project. The FSP must address an inventory of critical assets; an evaluation of the condition and performance of inventoried assets; a certification that the recipient has evaluated and will be implementing water and energy conservation efforts; and a plan for maintaining, repairing, and as necessary, replacing the treatment works, and a plan for funding such activities.

Cost and Effectiveness Evaluation

Beginning October 1, 2015, recipients of EPA financial assistance agreements are required to study and evaluate the cost and effectiveness of the processes, materials, techniques, and technologies to carry out the proposed project.

The above requirements are subject to further interpretation by the EPA and will be implemented consistently with any formal guidance issued by the agency.

Miscellaneous

EPA Capitalization Grants may be allocated to any or all projects based on the amount of available grant and re-loan funds and at the direction of EPA.

The proposed payment schedule using FFY15 Water Pollution Control funds will be included in the application for the capitalization grant. The payment schedule identifies the anticipated amount of EPA Automated Clearinghouse (ACH) draws from the capitalization grant and state dollars to be deposited into the WPCRF.

The State will provide the necessary assurance and certifications as part of the Capitalization Grant Agreement and Operating Agreement between the state and EPA.

In accordance with federal statutes, states are authorized to provide loans at or below market interest rates, including interest free loans, at terms not to exceed the lesser of 30 years and the projected useful life (as determined by the State) of the project to be financed with proceeds of the loan.

Capitalization Grants and Re-loan Funds

The federal capitalization grant will primarily be used to fund all loan applicants first, subject to program constraints, to assist with reducing any unliquidated obligations. Re-loan funds will generally be allocated after federal monies have been issued.

Disadvantaged Communities (DAC) Loans

A DAC is defined as ~~a governmental agency that has~~having a population of 5~~,000~~10,000 or less with a median household income (MHI) that is 80.0% or less than the state MHI; a 24-month average county unemployment rate of more than 2 percent; ~~and~~ an annual average county population change over the previous ten year period less than 5%, and must be a governmental agency. ~~In accordance with federal statutes, states are authorized to provide loans at or below market interest rates, including interest free loans, and terms up to 20 years.~~

- EPA capitalization grant funds or re-loans will be the source of capital used to fund DAC loans. To the maximum extent practical and based on available data, projects eligible to receive the reduced interest rate will be identified on the **Appendix B: Project Priority / Fundable List**.
- MHI as a percentage of the statewide MHI will be used to distribute funding to governmental agencies that are disadvantaged in accordance with two categorical affordability tiers.

DAC	MHI	Loan Amount	Loan Terms
Category 1	MHI between 61.0% - 80.0%	up to $2.5 million per project	Loan terms up to ~~20~~30 years * Interest rate is established at 50% of the direct loan rate**
Category 2	MHI less than 61.0%	up to $2.5 million per project	Loan terms up to ~~20~~30 years * Interest rate is established at 0% **

*Not to exceed the project's design life.

** The authority board determines all interest rates on or before December 31st each year for the following calendar year.

- DAC status will be determined based on:
    - The most current American Community Survey (ACS) data at the time the pre-qualification is submitted.
    - The most recent complete year release of 24-month average county unemployment data from the Bureau of Labor Statistics (BLS) (2014 data valid until March 2015).
    - The most recent intercensal population trend estimate from the State Demography Office, Department of Local Affairs (2013 data valid until fall 2015).
    - The DAC status determination will be valid for a period of 18 months. If the applicant does not execute the loan with DAC terms during the 18 months, the most current ACS data will be ~~referred~~utilized to determine DAC status.

Note: All loan requests exceeding the direct loan limit of $2.5 million will not be eligible for a DAC loan. If the authority board decides to utilize additional subsidy for capital construction, **Attachment II: Application of Additional Subsidization** will be used.

Planning and Design Grants

The intent of the planning and design grants is to assist WPCRF applicants with costs associated with complying with program requirements such as: engineering reports, environmental assessments, engineering design documents, energy audits and legal fees associated with the formation of a legal entity capable of receiving WPCRF assistance.

As mentioned in the principal forgiveness loan section previously, the authority board is considering a shift in the use of additional subsidy for FFY15 to fund planning activities on an individual project basis. In the event additional subsidy is authorized for this purpose, the amount and criteria for planning and design grants will be set per the authority board. If the authority board determines to utilize the same planning and design grant criteria as identified in the 2014 IUP, the following criteria will be used:

- Project is on the current year WPCRF **Appendix A: Project Eligibility List** or will be added to the subsequent year's project eligibility list,
- Population is 5,000 or less, and
- MHI is 80.0 percent or less than the statewide MHI. Colorado's MHI is $58,244 amounting to 80 percent MHI at $46,595 according to the American Community Survey 2008-2012.
- A local match of 20 percent is required for all planning and design grants. Planning and design grant invoices will be paid at no more than an 80:20 ratio.

The ranking system is located in **Attachment III: Colorado WPCRF Planning & Design Grant Prioritization**. Governmental agencies must meet the following Planning and Design Grant criteria.

One grant in the amount of up to $10,000 will be awarded per community, per project. An applicant may not receive more than one planning and design grant for the same project. Additional funds may be allocated for planning and design grants at the discretion of the authority board.

Grant applications will be accepted between January 1 and January 31 of each year. Starting February 1, all applications will be prioritized according to the criteria set forth in **Attachment III: Colorado WPCRF Planning & Design Grant Prioritization** and awards will be made in rank order until all grants have been expended. If there are more grant funds than applications, funds will be disbursed on a first come first serve basis. If the entity does not seek funding through the WPCRF, they may be requested to repay the grant or seek a waiver of the repayment requirement from the authority board.

These planning and design grant funds are provided from the administrative fee account from income received from WPCRF loans.

Special Projects

Colorado Governor John Hickenlooper implemented a state agency initiative to apply customer-focused process improvements to state services (commonly known as LEAN) with the purpose of increasing efficiency and effectiveness while measuring such improvements. The SRF agencies are utilizing the LEAN concept to improve SRF program processes and the borrower's experience. LEAN is defined as a

systematic approach of continuous improvement, based on what the customer needs are through an effective and efficient business process. The WPCRF program is anticipating implementing a portion of the future state by January 1, 2015 and full LEAN implementation is anticipated by the end of the 2015 calendar year.

The division and authority will work together to support a regional study of the pending revisions to the ammonia criteria. New EPA ammonia criteria, based on predominantly eastern and Midwestern species' sensitivity, will result in very stringent permit effluent limits. Neighboring states including Utah and Montana are interested in a cooperative effort to collect water quality and aquatic life data that is more representative of conditions in the arid west.

The division and authority will work together to evaluate the impacts of implementing current temperature standards into discharge permits. Temperature standards were adopted by the commission in 2007. As they have been implemented throughout Colorado, treatment technologies related to sewage heat recovery need to be evaluated so that guidance can be developed to assist with compliance schedule development and discharger specific variance efforts where necessary.

The division and authority will work together to develop and implement nutrient nonpoint source management outreach activities. Nutrient nonpoint source management will rely on a strong public outreach message with the backing of local partners. A statewide public outreach program utilizing all 76 conservation districts to inform local landowners is envisioned. Priority geographic areas for agricultural nutrient management will be targeted for additional educational programs and on-farm demonstration and measurement of best management practices.

The division will request funds from the authority for continued support of nonpoint source maintenance so that previous 319 nonpoint source grant investments made for clean up and reclamation are protected.

Emergency Procedures

The WQCC may amend **Appendix A: Project Eligibility List** and **Appendix B: Project Priority / Fundable List** at any time throughout the year to include projects that it determines and declares to be emergency projects needed to prevent or address threats to public health. In cases where the WQCC determines the amendments will result in substantial changes to **Appendix A: Project Eligibility List** or **Appendix B: Project Priority / Fundable List**, public notice and opportunity for comment on the proposed inclusions shall be provided.

Financial Status of the WPCRF

As of June 30, 2014, 81 WPCRF direct loans totaling $76,104,066, 99 WPCRF leveraged loans totaling $844,218,530, and 44 disadvantaged community loans totaling $30,839,818, were administered or are currently being administered by the state. In addition, as of December 31, 2011, 12 American Recovery and Reinvestment Act loans including principal forgiveness totaling $30,093,792 were administered by the state. The total loan amount for the 236 loans is $981,256,206.

The FFY14 capitalization grant was awarded on April 21, 2014. The EPA allotment was $11,216,000 and the state match was $2,243,200 for a total of $13,459,000. The state is unable to anticipate the

amount and funding levels for the FFY15 capitalization grant. For appendices and table purposes the FFY14 amounts were assumed for FFY15 and may or may not be accurate.

The total amount of federal capitalization grant awards through FFY14 available for loans and program administration is $315,826,923. Of this amount, $306,219,931 has been obligated through June 30, 2014, for loans, seen in Appendix C and Appendix D, and $11,278,100 has been allocated for program administration. The amount of unobligated grant funds as of June 30, 2014 is $9,606,992.

Attachment IV: Cash Draw Proportionality Percentages, lists the open projects funded through June 30, 2014 with capitalization grant funds and the ratio of federal funds that are drawn.

Re-loan funds of approximately $98,211,710 are expected to be available for the remainder of the 2014 calendar year and during the 2015 calendar year. Approximately $113,702,676 of grant and re-loan funds will be available for loans for the remainder of 2014 and in the year 2015. Because Colorado leverages the fund, the 2015 loan capacity of the WPCRF should be approximately $121,730,108, as seen in **Attachment V: WPCRF Calculation of Loan Capacity**. To leverage the available grant and re-loan funds for 2015, the authority would anticipate issuing $20 to $50 million in Clean Water Revenue Bonds for a term of twenty years plus the construction period at estimated interest rates of 2 to 4 percent to provide loan rates (currently 70 percent of market) as set by the authority board on or before the December 2014 board meeting.

The WPCRF currently charges up to a 0.8 percent administrative fee on all loans based on the original principal amount of the loan. On direct loans, more of the fee is front loaded because there are not enough interest charges on the backend to charge a full 0.8 percent on the original principal. It is estimated that $5,382,998 will be generated in loan fees in 2014 and $5,248,774 in 2015. Up to $1 million of WPCRF administrative fees collected from loans may be transferred to the DWRF to pay for administrative costs of the DWRF.

Appendix E: Funds Available to the WPCRF Loan Program identifies the revenues and expenses from the administrative fee account that are outside of the revolving loan fund. The values in this table may not reconcile differences between cash and accrual accounting methods. In consultation with the WQCC and the authority board, the division intends to pursue the option of using funds generated from the loan fee to fund eligible water quality activities as provided for in EPA's CWSRF 06-01 Policy Memo regarding Guidance on Fees Charged by States to Recipients of Clean Water State Revolving Program Assistance. These activities may include, but are not limited to, water quality monitoring, developing total maximum daily loads, water quality restoration plans, and management of other state financial assistance programs for water quality related purposes. Additionally, administrative fee income will be used to fund planning and design grants.

The proposed payment schedule using FFY15 WPCRF funds will be included in the application for the capitalization grant. The payment schedule identifies the anticipated amount of EPA ACH draws from the capitalization grant and state dollars to be deposited into the WPCRF.

Transfer Activities

As authorized by Congress, Section 302 of the SDWA Amendments authorizes a state to transfer up to 33 percent of the amount of a fiscal year's DWRF program capitalization grant to the Clean Water State

Revolving Fund program or an equivalent amount from the Clean Water State Revolving Fund program to the DWRF program. In turn, 33 percent cumulative DWRF capitalization grants for FFY97 through FFY14 (total DWRF grants at $290,414,600) may be reserved from the DWRF and transferred to the WPCRF and this same amount may be transferred from the WPCRF to the DWRF. **Attachment VI: Net Funds Available for Transfer** itemizes the amount of net SRF funds available for transfer between the two programs.

If a transfer is pursued, a stakeholders group will be notified of the state's intent to transfer funds. Based on the WQCC and the Governor's approvals, a transfer of no more than $10 million will be made in 2015. The exact amount of the transfer will be determined after the January 15 or June 15 application deadlines and the WPCRF and DWRF loan demands are determined. None of the transferred funds will be used for administrative purposes.

It is estimated that a transfer of $5 - $10 million from either the WPCRF to the DWRF will reduce the revolving level of that program by $1 - $2.5 million/year over the next 20 years. The DWRF set-asides would not be affected and the remainder of the allocation would be deposited into the revolving fund.

Any transfer would be deposited in the appropriate program and only available for loans. With the statutory language approved by the Colorado State General Assembly in 2002, any transfers can be made from one account to the other with all of the appropriate approvals.

Cross-Collateralization Activities

Beginning in the calendar year commencing on January 1, 1999, the WPCRF, along with the DWRF, cross-collateralized or pledged moneys on deposits in one fund to act as additional security for bonds secured by moneys on deposits in the other fund. This mechanism was utilized for both programs in 1999 and, as a result, the bond ratings for both programs were upgraded to AAA by all three bond rating agencies. This upgrade translates to lower interest rates and thereby more savings to the borrowers of both programs.

Public Review and Comment

On September 8, 2014, the WQCC published this information and held an administrative action hearing on October 14, 2014, at which time the state's 2015 IUP, including the 2015 WPCRF project eligibility list and project priority / fundable list, was approved. Each year, the IUP will be amended to include additional WPCRF projects and other appropriate changes. The division will continually seek public review and comment for the proposed list of eligible projects and IUP brought before the WQCC for annual approval. During the annual project eligibility list survey process the division contacted governmental agencies to identify potential projects for the 2~~0162~~2015 WPCRF IUP.

Attachment I: Colorado WPCRF Priority Scoring Model

Water Quality Improvement Criteria	Points
Project addresses a water quality impairment identified in the 303(d) list or a groundwater standard that has been exceeded	40
Project will implement an approved TMDL (total maximum daily load) • 1 TMDL • 2 TMDLs • 3 or more TMDLs	 50 75 80
Project applies BMPs to mitigate against erosion, sedimentation, pollution runoff, including: • Creation of riparian buffers, floodplains, vegetated buffers, slope stabilization and additional stream restoration methods • Supports wetland protection, restoration or creation by means of constructed wetlands	 10 10
Project corrects Individual Sewage Disposal Systems or exfiltration for sewers shown to be polluting either surface or groundwater and mitigates a public health emergency and/or a confirmed repeated contamination of a supply source by E. coli, fecal coliform or nitrate above established standards	50
Financial / Affordability Criteria	**Points**
Median Household Income (MHI) of service area* • < 40.0% of State MHI • MHI ≥40.0% to < 60.0% of State MHI • MHI ≥60.0% to < 80.0% of State MHI *percent of MHI will be calculated using the same method in Section E (5i).	 25 15 5
User Fees: Proposed Fees per single family equivalent (SFE) as a percent (%) of median household income • Rates are more than 1.5% of service area's MHI • Rates are between 1% and 1.5% of service area. • Rates are less than 1% of service area's MHI	 25 15 5
Indebtedness* = (existing debt + proposed debt)/SFE** MHI • > 5% of area MHI • Between 2% and 5% of area MHI • Below 2% *Indebtedness is based on the amount of sewer debt only **SFE= *Total Wastewater Flow from Service Area (average gal /day)* / *Average Wastewater Load from one SFE (average gal/ day)* Average occupancy= 2.55/SFE; Average daily wastewater flow - 75 gallons/person/day	 25 15 5
Population: • Less than 1,000 population • 1,000 to 4,999 population	 25 15

• 5,000 to 10,000 population	5
Permit Compliance	**Points**
Project is designed to maintain permit compliance or meet new permit effluent limits	40
Project addresses a facility's voluntary efforts to resolve a possible violation and will mitigate the issuance of a consent order or other enforcement action	25
Project addresses an enforcement action by a regulatory agency and the facility is currently in significant non-compliance	15
Sustainability / Green Project Reserve (GPR)	**Points**

Project incorporates one or several of the following planning methodologies:
• Regionalization and consolidation
• Promoting sustainable utilities and/or communities through
  ○ Fix it first
  ○ Asset management planning
  ○ Full cost pricing
  ○ Life cycle cost analysis
  ○ Evaluation of innovative alternatives to traditional solutions
• Conservation easements and/or land use restrictions
	5 (for one or more)

Project incorporates Green Project Reserve Components at minimum of 20% of total project costs: • Green infrastructure • Water efficiency • Environmentally innovative • Energy efficiency • Project is categorically eligible for the GPR and does NOT require a business case (bonus points)	 10 10 5 5 5
Readiness to Proceed	**Points**
Project has secured one or more of the following: • Request for PELs submitted • Site application submitted and approved • Plans and specification submitted • Plans and specification approved	5 (for one or more)
Project implements one or more of the following planning instruments: • Watershed management plan • Source water protection plan • Nonpoint source management plan • Approved 305(b) Report Category 4b designation • Nutrient management plan • Comprehensive land use planning	5 (for one or more)
Project has funding secured by multiple financial assistance provider(s)	10

Attachment II: Application of Additional Subsidization

Additional Subsidization	
Additional Subsidy Points (Affordability Score + Water Quality Improvement Score)	**Percent of Project Costs as Principal Forgiveness***
≥ 130 points	80% principal forgiveness
100 – 129 points	60% principal forgiveness
<99 points	40% principal forgiveness

*No one project can receive more than 50 percent of total amount of funds that have been set aside for additional subsidization for that fiscal year. For example, if Colorado has set aside $2 million for FY2014 to be provided as additional subsidization, no project can receive more than $1 million in principal forgiveness.

Attachment III: Colorado WPCRF Planning and Design Grant Prioritization

Financial/Affordability	Points
Median Household Income (MHI) of service area	
• < 40.0% of state MHI	30
• MHI ≥40.0% but <60.0% of state MHI	20
• MHI ≥60.0% but <80.0% of state MHI	10
Population:	
• Less than 500	30
• 500 to 1,000 population	20
	10

• 1,001 to 5,000 population	
Water Quality Improvement	**Points**
Project will correct an identified water quality impairment of a water body that is included on the 303(d) list.	25
Project applies BMPs to mitigate against erosion, sedimentation and pollution runoff.	5
Project corrects Individual Sewage Disposal systems shown to be polluting either surface or groundwater.	15
Permit Compliance	**Points**
Project is designed to maintain permit compliance or meet new permit effluent limits.	15
Project addresses a facility's voluntary efforts to resolve a possible violation and will mitigate the issuance of a consent order or other enforcement action.	10
Project addresses an enforcement action by a regulatory agency and the facility is currently in significant non-compliance.	5
Sustainability	**Points**
Project implements sustainable measures, such as fix it first methodology, development of an asset management plan, or regionalization and consolidation.	5
Project will generate and/or utilize reclaimed water for direct re-use, or correct a water loss issue	10

In the event that two or more projects are tied, the highest financial/affordability score will be used to break the tie. Should a tie between projects remain after sorting by the affordability, the water quality improvement section will used and the tied projects will be ranked from highest to lowest for each respective category in that section. If the tie cannot be broken through the above process, permit compliance will be used with the final tie breaker being the highest percentage of match to the total planning and/or design cost.

Attachment IV: Cash Draw Proportionality Percentages- WPCRF Grant Funded Loans as of June 30, 2014

LL-Leverage Loan / DL-Direct Loan

Project	Loan Execution Date	Total Loan	Federal Share	Actual State Match Ratio *	Adjusted State Match Ratio**	State Share	Additional Subsidization
Glenwood Springs, City of (LL)	05/13/10	$ 31,460,100.00	$ 8,200,500.00	20.00%	20.00%	$ 1,640,100.00	
Cheraw, Town of (DL)	10/21/10	$ 405,000.00	$ 389,778.00	3.91%	20.00%	$ 15,222.00	$ 405,000.00
Mountain View Villages W&SD (DL)	10/21/10	$ 288,601.00	$ 281,092.00	2.67%	20.00%	$ 7,509.00	$ 288,601.00
Empire, Town of (DL)	12/20/10	$ 499,995.00	$ 466,337.00	7.22%	20.00%	$ 33,658.00	$ 499,995.00
Olathe, Town of (DL)	4/8/2011	$ 500,000.00	$ 434,453.05	15.09%	20.00%	$ 65,546.95	$ 500,000.00
Fountain SD (LL)	11/3/2011	$ 6,860,302.80	$ 5,001,514.00	20.00%	20.00%	$ 1,000,302.80	
Windsor, Town of (LL)	11/3/2011	$ 3,110,543.20	$ 2,477,716.00	20.00%	20.00%	$ 495,543.20	
Naturita, Town of (DL)	6/4/2012	$ 700,000.00	$ 668,878.60	4.65%	20.00%	$ 31,121.40	$ 500,000.00
Rocky Ford, City of (DL)	11/20/2012	$ 1,750,000.00	$ 1,477,861.60	18.41%	20.00%	$ 272,138.40	$ 192,436.00
Huerfano County Gardner W&S PID (DL)	12/5/2012	$ 250,000.00	$ 223,772.07	11.72%	20.00%	$ 26,227.93	$ 250,000.00
Olney Springs, Town of (DL)	1/31/2013	$ 573,000.00	$ 503,404.72	13.82%	20.00%	$ 69,595.28	$ 250,000.00
Cokedale, Town of (DL)	5/1/2013	$ 250,000.00	$ 212,384.98	17.71%	20.00%	$ 37,615.02	$ 250,000.00
Hillcrest W&SD (DL)	5/2/2013	$ 639,000.00	$ 538,034.55	18.93%	20.00%	$ 101,865.45	

Pueblo, City of (LL)	5/15/2013	$ 1,563,694.00	$ 1,308,489.50	19.50%	20.00%	$ 255,204.50	
Project	**Loan Execution Date**	**Total Loan**	**Federal Share**	**Actual State Match Ratio ***	**Adjusted State Match Ratio****	**State Share**	**Additional Subsidization**
South Adams County W&SD (LL)	5/24/2013	$ 591,500.00	$ 499,557.04	18.40%	20.00%	$ 91,942.96	
Fairways MD (DL)	6/17/2013	$ 1,227,736.00	$ 1,029,666.14	19.24%	20.00%	$ 198,069.86	
Mansfield Heights W&SD (DL)	6/28/2013	$ 1,916,075.00	$ 1,602,601.61	19.56%	20.00%	$ 313,473.39	
Larimer County LID 2012-1 (RGE) (DL)	5/6/2014	$ 4,179,047.20	$ 2,336,706.00	20.00%	20.00%	$ 467,341.20	
South Sheridan WSS&SDD (DL)	5/6/2014	$ 22,191,850.40	$ 12,076,542.00	20.00%	20.00%	$ 2,415,308.40	
Fowler, Town of (DL)	6/30/2014	$ 1,400,000.00	$ 1,166,620.00	20.00%	20.00%	$ 233,380.00	
Larimer County LID 2013-1 (BE)	6/30/2014	$ 970,341.00	$ 808,585.16	20.00%	20.00%	$ 161,755.84	
Cokedale, Town of (DL#2)	6/30/2014	$ 160,000.00	$ 133,328.00	20.00%	20.00%	$ 26,672.00	
Total		$ 81,486,785.60	$ 41,837,822.02			$ 7,959,593.58	$ 3,136,032.00

*Actual state match drawn ratio prior to implementation of correct proportionality (for loans executed prior to January 1, 2014 -- loans executed after January 1, 2014, were allocated and draw the correct ratio).

**Beginning January 1, 2014 and going forward, state match ratio drawn on all loan project requisitions. In January, 2014, the Authority implemented new procedures to meet the EPA proportionality requirement for project/loan grant draws.

The remaining undrawn loan amounts of all loans funded with 100% grant funds prior to January 1, 2014 were adjusted to meet the proportionality requirement beginning in January 1, 2014 and will draw at the correct federal/state match ratio until complete.

Attachment V: WPCRF
Calculation of loan capacity for 2015
As of June 30, 2014

Capitalization grants for loans through 2014	$315,826,923
Obligated for loans through 6/30/14	$306,219,931
Remainder	$9,606,992
Estimated 2015 Capitalization Grant	$11,216,000
Less 4 percent administrative fee	$448,640
Total 2015 Grant	**$10,767,360**
Less 2014 grant fund used remainder 2014 (for Direct Loans)	$3,052,340
Less grant funds for expected 2014 additional subsidy	$915,522
Less grant funds for expected 2014 additional subsidy	$915,522
Plus transfer from DWRF in 2014	$0
Total grant funds available	**$15,490,966**
Re-loan funds as of 06/30/14	$56,444,931
plus: De-allocation on 9/1/14	$21,529,555
plus: De-allocation on 9/1/15	$20,237,224
less: Re-loan funds used for direct loans remainder of 2014	$0
Total re-loan funds available	**$98,211,710**
Loan Capacity for 2015 (includes 9/1/15 de-allocation)	
Additional subsidy	$1,831,046
Leveraged loans from grant funds X 1.40	$21,687,352
2015 WPCRF Loan Capacity	**$121,730,108**

Attachment VI: Net Funds Available for Transfer

All dollar figures are in millions.

Year	Transaction	Banked Transfer Ceiling	Transferred from WPCRF -DWRF	Transferred from DWRF-WPCRF	WPCRF Funds Available for Transfer	DWRF Funds Available for Transfer
1997	CG Award	$5.6	---------	---------	$5.6*	$5.6*
1998	CG Award	8.8	---------	---------	8.8	8.8
1999	CG Award	12.1	---------	---------	12.1	12.1
1999	Transfer	12.1	$6.7**	---------	5.4	18.8
2000	CG Award	15.6	---------	---------	8.9	22.3
2001	CG Award	19.1	---------	---------	12.4	25.8
2002	CG Award	23.6	---------	---------	16.9	30.3
2003	CG Award	28.0	---------	---------	21.3	34.7
2003	Transfer	28.0	---------	$6.7**	28.0	28.0
2004	CG Award	32.2	---------	---------	32.2	32.2
2005	CG Award	36.7	---------	---------	36.7	36.7
2006	CG Award	41.5	---------	---------	41.5	41.5
2007	CG Award	46.3	---------	---------	46.3	46.3
2008	CG Award	51.0	---------	---------	51.0	51.0
2009	CG Award	55.7	---------	---------	55.7	55.7
2010	CG Award	75.1	---------	---------	75.1	75.1
2011	CG Award	80.5	---------	---------	80.5	80.5
2012	CG Award	85.8	---------	---------	85.8	85.8
2013	CG Award	90.8	---------	---------	90.8	90.8
2014	CG Award	95.8	---------	---------	95.8	95.8

***Transfers could not occur until one year after the DWRF had been established.**

****$6.7 million capitalization grant funds and $1.3 million state match funds.**

Colorado Drinking Water Revolving Fund Intended Use Plan

2015

COLORADO
Department of Public Health & Environment

COLORADO WATER RESOURCES & POWER DEVELOPMENT AUTHORITY

COLORADO
Department of Local Affairs

Photo by Kavram

WQCC Approved: October 14, 2014 | Effective Date: January 1, 2015 | Amended September 30, 2015

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Introduction to the Colorado DWRF

The Drinking Water Revolving Fund (DWRF) program provides financial assistance to governmental agencies or private nonprofit entities[1] for the construction of water projects intended to improve public and environmental health, help communities adhere with the federal Safe Drinking Water Act (SDWA), and invest in Colorado's water infrastructure.

State legislation (SB 95-083) established the DWRF as an enduring and viable fund. The DWRF shall be maintained and be available in perpetuity to provide financial assistance as authorized and limited by the SDWA.

State Revolving Fund (SRF) Partnership

The SRF program is administered by three partnering agencies. Colorado ~~statues~~statute directs the Colorado Department of Public Health and Environment, Water Quality Control Division (division); the Colorado Water Resources and Power Development Authority (authority); and the Colorado Department of Local Affairs, Division of Local Government (DLG), to jointly operate the SRF. The SRF Agencies administer the programs in alignment with the same common goals approved and supported by the Water Quality Control Commission (WQCC) and the authority board of directors (authority board).

SRF Agencies Responsibilities

Division	Authority	DLG
• Primacy agency. • Program administration. • Technical review and advisory role. • Manages DWRF set asides. • Federal reporting.	• Financial structure. • Manages budgets and investments. • Disburses funds. • Federal reporting. • Provides state match.	• Financial and managerial assistance to systems. • Coordinates funding collaboration via Funding Coordination Committee. • SRF outreach. • Conducts financial capacity assessments.

Program Mission

- Dedicated to providing affordable financing to systems by capitalizing on all available funds to address the state's priority water related public health and water quality issues.
- Actively target and allocate affordable resources to projects and initiatives that result in significant public health and environmental benefits, while maintaining perpetual, self-sustaining revolving loan fund programs.
- Manage the funds in a manner to provide benefits for current and future generations.

The SRF agencies also partner with the state Funding Coordination Committee (committee) which includes staff from the division, authority, DLG, Colorado Water Conservation Board, USDA Rural Development, Colorado Rural Water Association and Rural Community Assistance Corporation. The committee facilitates the use of collaborative capital financing when appropriate.

Intended Use Plans (IUP)

The IUP is a federal Environmental Protection Agency (EPA) Capitalization Grant agreement requirement. The DWRF IUP describes the agencies' plan to utilize funds to finance drinking water infrastructure and support related program activities during the calendar year 2015.

(1)Colorado SB15-121 provides the ability for private nonprofit entities to access the DWRF; however, programs and procedures have not yet been developed for private nonprofit entities. It is anticipated that private nonprofit programs, funding, and Disadvantaged Community eligibility, will be defined in the 2016 Colorado DWRF IUP. Planning and design documents will be accepted in the interim. Grant funding for private nonprofit entities is not available in 2015.

Long Term Goals

Colorado's long-term goals were established to protect public health, ensure the integrity and sustainability of the DWRF, and provide support for the division strategic plan goals (2011-2015). Additional long term goals include:

- Effectively and efficiently deliver financial and technical assistance to public water systems.
- Award SRF resources in accordance with the needs of Colorado citizens.
- Maintain the fiscal integrity of SRF funds and assure continued program enhancements.
- Leverage funds in the DWRF and Water Pollution Control Revolving Fund (WPCRF) to maximize the amount of available funding for projected loans identified in the annual IUPs while continuing to reduce un-liquidated obligations.
- Maintain compliance with state and federal laws.
- Continue to implement process improvement activities through LEAN practices.
- Work to implement a statewide needs assessment of early implementation of future rules.
- Identify and assist projects/studies that look at water quality issues on a regional level impacting public water systems (e.g., high nitrates on the eastern plains).
- The committee will strengthen its ability to identify and influence funding decisions to maximize use of all available state and federal funds for the highest priority water related public health and environmental projects.
- Evaluate the current disadvantaged community program to determine its alignment with the future LEAN state and whether or not the current definition meets the needs of Colorado communities.

Short Term Goals

Short-term goals of the DWRF for 2015 include:

- Complete the pre-qualification, engineering needs assessment, plans and specification self-certification criteria and HOP revisions for LEAN implementation.
- Attend conferences to provide program information to potential borrowers such as Colorado Rural Water Association, Colorado Municipal League and Special District Association and the Colorado Water Congress conferences.
- Maximize use of all DWRF Capitalization Grant funds as directed by EPA.
- Maximize utilization of the four percent administrative set-aside funds, to support eligible activities including technical support to public water systems.
- Identify, select and implement an online integrated system that supports eligibility survey, application processes, and project management for the DWRF and WPCRF that provides better program coordination and transparency between staff and stakeholders.
- Target funding to address uranium, radium and other radionuclides.
- After receipt of the EPA allotment formula and appropriation guidance, the authority, in conjunction with the division, will submit an application for the annual capitalization grant funds in a manner that maximizes effective and timely use of funds while reducing un-liquidated obligations.
- The division, in conjunction with the authority and DLG, will identify and develop criteria to provide loan incentives for drinking water projects that participate in the Drinking Water Excellence Program.

Drinking Water Revolving Fund Projects

Colorado SRF priority projects address risks to public health, disadvantage communities and SDWA compliance. Examples of eligible and ineligible projects are listed below.*

Eligible Project Examples

- Addresses present and future SDWA requirements.
- Replaces aging infrastructure.
- Restructure and consolidate water supplies to rectify contamination issues or to assist systems unable to maintain and ensure SDWA compliance for financial or managerial reasons.
- Purchase a portion of another system's capacity to cost-effectively rectify a SDWA compliance issue.
- Planning including required environmental assessment reports, design and construction costs associated with eligible projects.
- Land acquisition **
  - Land must be integral to the project.
  - Acquisition must be from a willing seller.

Ineligible Project Examples

- Dams or rehabilitation of dams.
- Water rights, except water rights owned by a system purchased to consolidate for capacity development.
- Reservoirs, except finished water reservoirs that are used for treatment processes which are located on the same property as treatment facility.
- Drinking water monitoring costs.
- Operation and maintenance costs.
- Projects primarily for fire protection.
- Projects for systems that lack adequate technical, managerial and financial capability, unless assistance will ensure compliance.
- Projects for systems in significant noncompliance under the SDWA; unless funding will ensure compliance.
- Projects primarily intended to serve future growth.

*Governmental agencies or private nonprofit entities(1) distributing or supplying 2,000 acre feet, or more, of water per year must have an approved (by the Colorado Water Conservation Board) and updated water conservation plan as defined by Section 37-60-126, CRS.

**The cost of complying with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (the Uniform Act) is an eligible cost.

(1) Colorado SB15-121 provides the ability for private nonprofit entities to access the DWRF; however, programs and procedures have not yet been developed for private nonprofit entities. It is anticipated that private nonprofit programs, funding, and Disadvantaged Community eligibility, will be defined in the 2016 Colorado DWRF IUP. Planning and design documents will be accepted in the interim. Grant funding for private nonprofit entities is not available in 2015.

Drinking Water Revolving Fund Project Lists

Appendix A: DWRF Project Eligibility List is an inventory of projects that completed an eligibility survey in 2014. The eligibility survey is released annually to potential borrowers to capture 20 year capital improvement needs. Appendix A includes the name of the public water system, a description of the project, population, the estimated cost of the project, potential green infrastructure type and cost and the type of project as described in the DWRF Rules. Borrowers can add projects to Appendix A by completing an eligibility survey in June of each year.

Appendix B: Project Priority / Fundable List is an inventory of projects that are eligible to receive or have recently received a loan from the DWRF. This list includes anticipated loan terms, interest rate and type of loan, project description and green infrastructure categories if applicable. Projects listed in Appendix B have a projected construction start date within 12-18 months at the time of eligibility survey submission in June. Project listed in Appendix B have been assigned a preliminary ranking score; however, this score is subject to refinement based on additional information from potential applicants and further prioritization. An active copy of Appendix B is maintained on the division's website.

Criteria, Methods and Evaluation for DWRF Distribution

This section describes the application process, including the prioritization criteria and authority board action, how policies apply to the allocation of loan proceeds, and the proposed Federal Fiscal Year (FFY) 2015 federal bill requirements, such as Green Project Reserve, principal forgiveness, Davis-Bacon Act, and American Iron and Steel.

Loan applications are accepted seven times a year and are scored based on the ranking system found in **Attachment I: Colorado DWRF Priority Scoring Model.**

Application, Prioritization and Approval

Applicants should coordinate with their assigned division project manager to determine the appropriate application schedule to ensure authority board action and loan execution in a timely manner. The table below lists loan application deadlines, types of loans and the authority board meeting where the application is presented for approval.

Application Deadlines	Loan Type	Authority Board Meetings
January 15, 2015	Direct loan Leverage loan (bond issue spring)	March
February 15, 2015	Direct loan	April
April 15, 2015	Direct loan	June
June 15, 2015	Direct loan Leveraged loan (bond issue fall)	August
August 15, 2015	Direct loan	October
October 15, 2015	Direct loan	December
November 15, 2015	Direct loan	January
All loans are subject to available funds and prioritization if needed		

The prioritization of applications will only occur if funding requests exceed available funds. **Attachment I: Colorado DWRF Priority Scoring Model** will be used for the prioritization of applications. Loan applicants that do not prioritize may be considered at the next applicable loan application date at the applicant's request.

The SRF agencies may determine applications be presented for approval at later authority board meetings depending on the volume of applications submitted at any one application deadline. Delays will not impact the applicant's prioritization ranking, but rather are meant to assist the SRF program workload balance. The determination will be based on the number of applications received, the applicant's timeframe for procuring funding and applicant's construction timeline.

All loan approvals are valid for 18 months. Prioritized and approved leveraged loans that do not execute their loan within 18 months will be reprioritized upon the next application deadline, if necessary.

Allocation of Loan Proceeds

The SRF programs have policies set by the WQCC, authority board, and SRF committee that dictate use of loan proceeds. Proceeds from loans and administration fees will be used to benefit communities through P~~lanning and Design Grants~~Planning Grants and Design/Engineering Grants and Disadvantaged Community Loans.

Capitalization Grant

For FFY15 and consistent with the 2014 appropriations language, the following requirements may apply to each state receiving DWRF capitalization grants:

Green Project Reserve (GPR)

Historically, the capitalization grant agreement has required all SRF programs to direct a portion of their capitalization grant toward projects that address green infrastructure, water efficiency, energy efficiency, or other environmentally innovative activities. This changed in FFY12 when EPA made the GPR requirement optional for states under the DWRF program; however, if the 2015 appropriation grant/guidance requires a GPR set-aside, the incentive below will be offered.

Projects that implement eligible green components equal to, or greater than, 20 percent of the total project cost will receive a reduced loan interest rate of 0 percent, for up to a maximum of $2.5 million. Leveraged loan projects over $2.5 million total cost will only be eligible for the reduced interest rate on the first $2.5 million. This incentive will only be offered until Colorado's GPR requirement has been met. These terms are subject to final action by the authority board and are not guaranteed terms until such time.
In the event that the 2015 appropriation guidance does not require additional GPR set asides, the incentive will only be available for any remaining unobligated GPR funds.

The division has identified and included potential green projects in **Appendix A: DWRF Project Eligibility List** and **Appendix B: Project Priority / Fundable List**. These projects have been identified by *green type* and the estimated dollar amount. The division will utilize the definition for *categorical* and business case as provided by the EPA in the appropriation guidance. The division will review all business cases to determine GPR eligibility and post them on the division's website.

Principal Forgiveness Loans

In 2014, the DWRF capitalization grant appropriation required that not less than 20 percent, but no more than 30 percent, of funds shall be used by the state to provide additional subsidy to eligible recipients in the form of principal forgiveness, negative interest loans, grants, or a combination of these.

The SRF programs are in the process of implementing the LEAN future state of the programs. Part of that process recommends use of the additional subsidy to be issued for the planning and engineering phase for SRF borrowers. This will provide the opportunity to assist with more planning and engineering monies to those who otherwise could not afford the project. Further, it will position projects to quickly move into construction prior to appropriating additional SRF funding. Utilization of additional subsidy for planning and engineering purposes and the related criteria and terms will be set solely by the authority board. In the event this recommendation is not approved, the following will be applied for any available additional subsidy in 2015.

The state intends to distribute the additional subsidy in the form of principal forgiveness per **Attachment II: Application of Additional Subsidization**. In 2015, principal forgiveness for the DWRF will be distributed one time at the June 15, 2015 application deadline. The balance of the funds remaining beyond the required additional subsidy will be made available through loans without principal forgiveness.

Davis-Bacon Act

The requirements of Section 1450(e) of the SDWA (42 U.S.C. 300j-9(e)) regarding prevailing wage rates shall apply to the construction of treatment works carried out in whole or in part with assistance made available by a state revolving loan fund as authorized by section 1452 of the SDWA (42 U.S.C. 300j (12)).

American Iron and Steel (AIS)

On January 17, 2014 Congress passed the AIS requirement as part of the EPA Consolidated Appropriations Act for iron and steel products used in SRF projects for construction, alteration, maintenance or repair. Projects with loan execution and/or plans and specification approval on or after ~~Januray~~January 17, 2014 and prior to October 1, 2014 are subject to AIS.

The statute permits EPA to issue waivers for a case or category of cases where EPA finds (1) that applying these requirements would be inconsistent with the public interest; (2) iron and steel products are not produced in the US in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron and steel products produced in the US will increase the cost of the overall project by more than 25 percent. States are allowed, on behalf of the borrower, to apply for waivers of the AIS requirement directly to EPA headquarters.
The DWRF program will refer to compliance guidance issued by the EPA which can be found at the following website: https://docs.google.com/file/d/0B0tmPQ67k3NVYkN2NWdGN2JGNjA/edit.

The above requirements are subject to further interpretation by the EPA and will be implemented consistently with any formal guidance issued by the agency.

Miscellaneous

EPA Capitalization Grants may be allocated to any or all projects based on the amount of available grant and re-loan funds and at the direction of EPA.

The proposed payment schedule using FFY15 drinking water funds will be included in the application for the capitalization grant. The payment schedule identifies the anticipated amount of EPA Automated Clearinghouse (ACH) draws from the capitalization grant and state dollars to be deposited into the DWRF.

The state will provide the necessary assurance and certifications as part of the Capitalization Grant Agreement and Operating Agreement between the state and EPA.

Capitalization Grants and Re-loan Funds

- Federal capitalization grant will primarily be used to fund all loan applicants first, subject to program constraints, to assist with reducing any un-liquidated obligations. Re-loan funds will generally be allocated after federal monies have been issued.
- Disadvantaged Communities Loans.

Disadvantaged Communities (DAC) Loans

In accordance with federal statutes, states are authorized to provide loans at or below market interest rates, including interest free loans with terms up to 30 years. A DAC is defined as a ~~governmental agency that has~~having a population of ~~5,000~~10,000 or less with a median household income (MHI) that is 80.0% or less than the state MHI; a 24-month average county unemployment rate of more than 2 percent; ~~and~~ an annual average county population change over the previous ten year period less than 5%, and must be a governmental agency[2].

- EPA capitalization grant funds or re-loan are the source of capital used to fund DAC loans. To the maximum extent practical and based on available data, projects eligible to receive the reduced interest rate will be identified on the **Appendix B: Project Priority / Fundable List**.
- MHI, as a percentage of the statewide MHI, will be used to distribute funding to governmental agencies that are disadvantaged in accordance with two affordability tiers.

DAC	MHI	Loan Amount	Loan Terms

Category 1	MHI from 61.0% - 80.0%	up to $2.5 million per project	Loan terms up to 30 years * Interest rate is established at 50% of direct loan rate **
Category 2	MHI less than 61.0%	up to $2.5 million per project	Loan terms up to 30 years * Interest rate is established at 0% **

*Not to exceed the project's design life.

** The authority board determines all interest rates on or before December 31st each year for the following calendar year.

- DAC status will be determined based on:
    - The most current American Community Survey (ACS) data at the time the pre-qualification is submitted.
    - The most recent complete year release of 24-month average county unemployment data from the Bureau of Labor Statistics (BLS) (2014 data valid until March 2015).
    - The most recent intercensal population trend estimate from the State Demography Office, Department of Local Affairs (2013 data valid until fall 2015).
    - The DAC status determination will be valid for a period of eighteen months. If the applicant does not execute the loan with DAC terms during the 18 months, the most current data will be ~~referred~~utilized to determine DAC status.

Note: All loan requests exceeding the direct loan limit of $2.5 million will not be eligible for a DAC loan. If the authority board decides to utilize additional subsidy for capital construction, **Attachment II: Application of Additional Subsidization** will be used.

(2)Colorado SB15-121 provides the ability for private nonprofit entities to access the DWRF; however, programs and procedures have not yet been developed for private nonprofit entities. It is anticipated that private nonprofit programs, funding, and Disadvantaged Community eligibility, will be defined in the 2016 Colorado DWRF IUP. Planning and design documents will be accepted in the interim. Grant funding for private nonprofit entities is not available in 2015.

Planning and Design Grants

The intent of the planning and design grants is to assist DWRF applicants with costs associated with complying with program requirements such as: engineering reports, technical, managerial and financial reviews, environmental assessments, engineering design documents, energy audits, and the legal and accounting fees that may be associated with the formation of a legal entity capable of receiving DWRF assistance.

As mentioned in the Principal Forgiveness Loan section above, the authority board is considering a shift in the use of additional subsidy for FFY15 to subsidize planning activities on an individual project basis. In the event additional subsidy is authorized for this purpose, the amount and criteria for planning and design grants will be set per the authority board. If the authority board determines to utilize the same planning and design grant criteria as identified in the 2014 IUP, the following criteria will be used:

- Project is on the current year DWRF Appendix A or will be added to the subsequent year's project eligibility list,
- Population is 5,000 or less, and
- MHI is 80.0 percent or less than the statewide MHI.
- A local match of 20 percent is required for all planning and design grants. Planning and design grant invoices will be paid at no more than an 80:20 ratio.

The ranking system is located in **Attachment III: Colorado DWRF Planning & Design Grant Prioritization**. Governmental agencies must meet the following planning and design grant criteria:

One grant in the amount of up to $10,000 will be awarded per community, per project. An applicant may not receive more than one planning and design grant for the same project. Additional funds may be allocated for planning and design grants at the discretion of the authority board.

Grant applications will be accepted between January 1 and January 31 of each year. Starting February 1, all applications will be prioritized according to the criteria set in **Attachment III: Colorado DWRF Planning & Design Grant Prioritization** and awards will be made in rank order until all grants have been committed. If there are more grant funds than applications, funds will be disbursed on a first come first serve basis. If the entity does not seek funding through the DWRF, they may be requested to repay the grant or seek a waiver of the repayment requirement from the authority.

These planning and design grant funds are provided from the administrative fee account from income received from DWRF loans.

Special Projects

Colorado Governor John Hickenlooper implemented a state agency initiative to apply customer-focused process improvements to state services (commonly known as LEAN) with the purpose of increasing efficiency and effectiveness while measuring such improvements. The SRF agencies are utilizing the LEAN concept to improve SRF program processes and the borrower's experience. LEAN is defined as a systematic approach of continuous improvement, based on what the customer needs are through an effective and efficient business process. The DWRF program is anticipating implementing a portion of the future state by January 1, 2015, and full LEAN implementation is anticipated by the end of the 2015 calendar year.

Emergency Procedures

The WQCC may amend **Appendix A: DWRF Project Eligibility List** and **Appendix B: Project Priority / Fundable List** at any time throughout the year to include projects that it determines and declares to be emergency projects needed to prevent or address threats to public health. In cases where the WQCC determines the amendments will result in substantial changes to Appendix **A: DWRF Project Eligibility List** or **Appendix B: Project Priority / Fundable List**, public notice and opportunity for comment on the proposed inclusions shall be provided.

Small Systems Funding Goal

To the extent that there are a sufficient number of eligible projects, the state shall use at least 15 percent of all funds credited to the DWRF account on an annual basis to provide loan assistance to systems serving 10,000 persons or fewer. It is anticipated that up to 45 small systems, with populations less than 10,000, will be funded from October 1, 2014 through December 31, 2015, for a total of up to $100+ million in DWRF loans. To further the small system-funding goal in 2015, planning and design grants will be made available to assist small systems.

Financial Status of the DWRF

A federally capitalized DWRF was authorized by the 1996 Amendments to SDWA and was established in Colorado with the receipt of the first capitalization grant in September, 1997. The DWRF requires the state to

match the total amount of the federal grant with a 20 percent contribution of state funds. On May 27, 2014, $3,078,800 was transferred and is available for state match. The DWRF provides both direct loans and leveraged loans to finance projects.

Direct loans are designed for smaller projects at or under $2.5 million. The program provides low interest direct loans to small public water systems that allow savings on cost of issuance. The direct loan sources are capitalization grant funds and re-loan funds.

Leveraged loans are designed primarily for investment grade borrowers with projects over $2.5 million. This type of loan is used as the source of security for bonds that are sold to increase the DWRF loan capacity. The loan source comes from the capitalization grant funds, state match funds and bond proceeds. In 2014, the program issued leveraged loans using a cash flow fund concept, to further enhance the leveraging capabilities and liquidity of the DWRF program. The leveraged loan structure may use the cash flow or reserve fund model in the future based on the authority board and current economic conditions. In 2014, the leveraged loan interest rate was 70 percent of the market rate including the administrative fee of up to 1.25 percent. The market rate on bonds is determined on the day of sale as the *all-in bond yield* or all costs considered of the AAA rated drinking water revenue bonds sold by the authority.

The authority board determines the interest rate for both direct and leveraged loans by the end of the calendar year for the following year.

The administrative fee income is deposited into an account separate from the DWRF and is used for SRF Agencies staffing and operations expenses. Administrative fee income will continue to be used to fund in part the planning and/or design grant program in 2015. Administrative fee income, as available, will be used beginning with the FFY08 DWRF capitalization grant to reimburse the authority for state match funds deposited to the DWRF. The program reserves the right to charge up to 1.25 percent administrative fee on all DWRF loans if it is determined that additional funds are needed to fund administrative costs and/or repay the state match provided by the Authority. Up to $1.0 million of WPCRF administrative fees collected from loans may be transferred to the DWRF to pay for administrative costs of the DWRF.

Administrative fees received from DWRF loans for 2015 are estimated to be $3,640,000. These funds will be used for direct program costs including legal and accounting fees, trustee fees and other consultant fees, in addition to labor and overhead allocations of the authority, division and DLG. Total costs for administration of the DWRF are estimated to be $2,815,000 and exclude any state match repayment. A portion of the state match may be paid from DWRF set aside grant monies. **Appendix F**: **DWRF Administrative Fee Account** is a table showing the administrative fee account activity since inception.

Each year the DWRF eligibility list needs (currently over $4.0 billion) are compared against the loan capacity of the DWRF. Continued leveraging will assist more communities on **Appendix A: DWRF Project Eligibility List** to achieve SDWA compliance. To date, the leveraged loan rates have been in the range of 1.86 percent to 4.60 percent. Although no interest income on the grant funds and state match funds accrue to the DWRF from the leveraged loans, the long-term or perpetual nature of the DWRF remains in place. Please see **Attachment IV: Calculation of DWRF Loan Capacity for 2015.**

Through June 30, 2014, the state has received a total of $290,414,600 in federal capitalization grants (includes the $6,666,667 transfer back to the WPCRF in 2003). Of this amount, $69,288,835 has been set aside for non-loan activities. The state expects to receive, but is unable to anticipate, the amount and funding levels of the

FFY15 capitalization grant. For appendices and table purposes, the FFY14 amounts were assumed for FFY15 and may or may not be accurate. **Attachment V: Cash Draw Proportionality Percentages**, lists the open projects funded with capitalization grant funds and the ratio of federal funds that are drawn.

The 2015 **Appendix B: Project Priority / Fundable List** documents 50 additional projects that have had a preliminary eligibility assessments completed through August 2014. The 50 projects added identified eligible project costs of $290,033,391.

Projects receiving an eligibility assessment during the calendar year will be added to the Appendix B throughout the year.

Transfer Activities

As authorized by Congress, Section 302 of the SDWA Amendments authorizes a state to transfer up to 33 percent of the amount of a fiscal year's DWSRF program capitalization grant to the Clean Water State Revolving Fund (CWSRF) program or an equivalent amount from the CWSRF program to the Drinking Water State Revolving Fund (DWSRF) program. In turn, 33 percent of the cumulative DWRF capitalization grants for FFY97 through FFY14 (total DWRF grants at $290,414,600) may be reserved from the DWRF and transferred to the WPCRF, and this same amount may be reserved from the WPCRF and transferred to the DWRF. See the table in **Attachment VI: Net Funds Available for Transfer**, which itemizes the amount of net SRF funds available for transfer between the two programs.

Based on the WQCC and governor's approvals, a transfer of no more than $10 million may be transferred to or from the DWRF into or out of the WPCRF in 2015. The exact amount of the transfer, if any, will be determined after the January 15 or June 15 application deadlines, and the WPCRF and DWRF loan demands are determined. If a transfer is pursued, a stakeholders group will be notified of the state's intent to transfer capitalization funds from the DWRF to the WPCRF or from the WPCRF to the DWRF. None of the transferred funds will be used for administrative purposes.

It is estimated that a transfer of $5 - $10 million from the either the DWRF to the WPCRF will reduce the revolving level of that program by $1 - $2.5 million per year over the next 20 years. The DWRF set-asides would not be affected and the remainder of the allocation would be deposited into the revolving fund. Given the low level of remaining grant funds in the DWRF, a transfer of grant funds out of the DWRF is unlikely in FY 2015.

This transfer of capitalization grant funds will be deposited in the appropriate program and will be available for loans. With the statutory language approved by the Colorado State General Assembly in 2002, any transfers can be made from one account to the other with all of the appropriate approvals.

Cross-Collateralization Activities

Beginning in the calendar year commencing on January 1, 1999, the WPCRF, along with the DWRF, cross-collateralized or pledged monies on deposits in one fund to act as additional security for bonds secured by moneys on deposits in the other fund. This mechanism was utilized for both programs in 1999 and, as a result, the bond ratings for both programs were upgraded to AAA by all three bond-rating agencies. This upgrade translates to lower interest rates and thereby more savings to the borrowers of both programs.

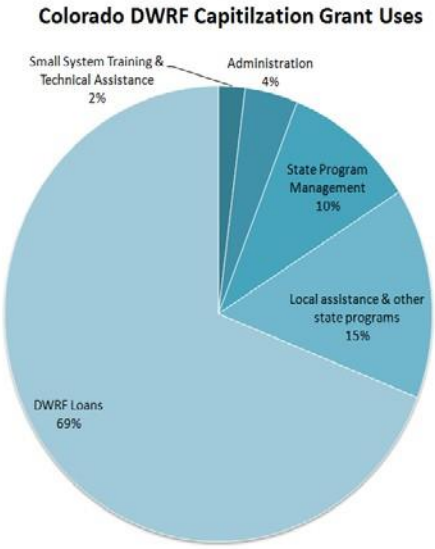
Operator Certification

The 1996 Amendments to the Federal Safe Drinking Water Act required that states develop certification programs for operators of water treatment plants and distribution systems. House Bill 00-1431 adopted by the

Colorado General Assembly revised the existing Colorado operators certification program, in part to meet the new federal requirements. In accordance with revised state statute, the division and the Water and Wastewater Facility Operators Certification Board have developed a program to implement the federal requirements. The EPA has approved the program.

DWRF Set Aside Activities

Colorado may set aside 31 percent of the capitalization grant for non-project or set-aside activities to fund activities necessary to accomplish the requirements of the SDWA. Work plans are developed and submitted to EPA describing the activities to be accomplished with the fund. The authority provides the 20 percent state match to receive the federal capitalization grant. Since FFY02 grant, the 20 percent match for the set-aside portion came from the loan administrative fee account.
The FFY14 capitalization grant amount was $15,394,000. A description of each set-aside and the funding earmarked from the FFY14 capitalization grant for each activity are described below. It is the responsibility of the division to determine the amount of funds necessary under each set-aside and to meet the obligations of the SDWA. The financial status of the set-asides is summarized in **Appendix D: DWRF Set-aside Activity**. The administration of the 2015 set-aside funds are listed below and is based on actual 2014 set-aside amounts, even though it is anticipated that the FFY15 capitalization grant will be lower than the FFY14.



FFY 15 Colorado Set Aside Request Summary		
Administration and Technical Assistance	4%	$615,760.00
Small System Training and Technical Assistance (SSTTA)	2%	$307,880.00
State Program Management	10%	$1,539,400.00
Local Assistance and Other State Programs	15%	$2,309,100.00
**Capacity Development*	*10%*	*$1,539,400.00*
**Wellhead Protection*	*5%*	*$769,700.00*
	Total	$4,772,140.00

*included in Local Assistance and Other State Program percentage

Administration and Technical Assistance Set-Aside (4%), FFY15 Requested Estimated Amount $615,760

Provides on-going administration for the DWRF and provides technical assistance to public water systems established by the EPA approved technical assistance work plan. Colorado intends to take the full set-aside.

Use of funds and expected accomplishments

To cover administrative and technical assistance expenses related to projects and activities authorized under the SDWA, including the provision of technical assistance to public water systems as identified in the EPA approved work plan.

Small System Training and Technical Assistance (SSTTA) (2%), FFY15 Requested Estimated Amount$307,880

Provides on-going training and technical assistance to small systems established in the tri-annual EPA approved work plan focusing on the capacity development strategy. Colorado intends to take the full set-aside.

Use of Funds and Expected Accomplishments

Provide technical assistance and training programs for not-for-profit systems. A portion of the technical assistance provided will be concurrent with sanitary surveys conducted at small water systems.

State Program Management (10%), FFY15 Requested Estimated Amount $1,539,400

Administers the State Public Water System Supervision (PWSS) Program established in the EPA approved state program management work plan for state fiscal years 2014-2016.

The act requires this set-aside be matched one-for-one with available state expenditures. The dollar-for-dollar federal match requirement will be met by utilizing drinking water program general funds, drinking water operator certification fees, drinking water related expenditures from the state laboratory, and 1993 Drinking Water Grant matching funds from the division. The laboratory contribution includes analyses of drinking water samples. According to SDWA, state program match funds that were expended in 1993 can be used to provide up to 50 percent of the set-aside match. Current year state funds in excess of the minimum required for the PWSS Program grant included in the department's performance partnership grant may also be used.

Colorado's match allows the division to take the full set aside and the division intends to take the full amount.

Use of funds and expected accomplishments

A portion of this set-aside will be used to fund staff to accomplish SDWA program requirements including:

- Data management system upgrades and maintenance;
- Improved system communication resulting in compliance progress and attainment;
- Effective program oversight, compliance assurance, enforcement, rule adoption, regulatory development, public water system assistance and capacity development;
- Staffing for engineering, compliance assurance, compliance assistance, rule management, data management, enforcement, administration, sampling, SWAP support, sanitary surveys, program management, contract oversight, early rule implementation, training and technical assistance and for implementing a capacity development strategy; and
- Computer acquisition and employee expenses including furniture, vehicles, operational costs and indirect costs.

Local Assistance and Other State Programs (15%), FFY15 Requested Estimated Amount $2,309,100

Provides assistance to five activities: capacity development programs, Wellhead Protection Program (WHP), source water protection activities (SWAP), SWAP land acquisition, and SWAP implementation. Colorado intends to take the full set-aside or 15% from the capitalization grant; however, no more than 10% may be allocated for a single activity. See the requested estimated amounts and targets below.

Capacity Development (10%), FFY14 Requested Estimated Amount $1,539,400

Assists new and existing systems to achieve and maintain technical, managerial and financial capacity as well as support SWAP activities.

Use of funds and expected accomplishments

- In support of the capacity development strategic goal to implement the Safe Drinking Water Program's 2015 Public Water System Training Strategy, the Safe Drinking Water Program has retained a contractor to assist in developing the administrative framework for the 2015 strategy. The framework will define the processes, guidelines and expected outcomes for training activities supported by the Safe Drinking Water Program. The framework is intended to assist in the decision making process regarding the allocation of funds and resources for public water system training services in the future. Additionally, the framework for the 2015 training strategy will likely generate additional contractor-provided training services to support strategy implementation. These activities will be captured under this framework;
- Maintain advanced operator training through the Colorado Drinking Water Excellence program for surface water systems of Colorado to ensure plants are operating at peak capabilities to ensure continuously safe drinking water;
- Continued improvements to the CDPHE drinking water website, to include access to new information and operator training;
- The use of cross-program compliance teams to identify and provide technical assistance to selected water systems that are in violation of regulations, including those with or soon to have an enforcement targeting tool (ETT) score greater than 11 and/or those with other compliance issues. This effort will utilize division staff and contractors with the goal of both resolving the violation and ensuring the water system has technical, managerial, and financial capacity (TMF);
- Development and delivery of training to address root causes of public water system failures;
- Improved sanitary surveys and oversight for non-community groundwater systems;
- Continued implementation of a coaching program to bring one-on-one training and technical assistance to small water systems with high priority deficiencies;

- Implementation of the source water assessment phase and protection planning assistance for surface water systems; and
- Staffing related to the above activities, including grant and contract management when activities are performed by a third-party.
- Source water delineates and assesses source water areas for surface and ground water systems. SWAP assessment reports were completed in December 2004.

Wellhead Protection Program (5%),
FFY14 Requested Estimated Amount $769,700

This is to delineate and assess source water areas for ground water systems, produce new WHP/SWAP assessment reports as necessary, and support development and implementation of local ground water protection plans.

Use of funds and expected accomplishments

- Completion of new and/or revised ground water source water delineations;
- Enhanced ground water susceptibility assessments to improve compliance;
- Improved ground water protection plans to minimize source contamination;
- Enhanced WHP/SWAP data management;
- Enhanced community information and education;
- Improved data compilation and reporting;
- Financial and technical assistance to facilitate groundwater protection plans;
- Coordinate and perform community and non-community groundwater sanitary surveys;
- Compilation and reporting of the national source water protection measures to EPA.

PUBLIC REVIEW AND COMMENT

On September 8, 2014, the WQCC published this information and held an Administrative Action Hearing on October 14, 2014, at which time the state's 2015 IUP, including the 2015 DWRF project eligibility list and project priority / fundable list, was approved. Each year, the IUP will be amended to include additional DWRF projects and other appropriate changes. The division will continually seek public review and comment for the proposed list of eligible projects and IUP brought before the WQCC for annual approval. During the annual project eligibility list survey process, the division contacted governmental agencies and private nonprofit entities to identify potential projects for the 2~~0162~~2015 DWRF IUP.

Attachment I: Colorado DWRF Priority Scoring Model

Drinking Water Quality & Public Health	Points
Project addresses a documented waterborne disease outbreak associated with the system within the last 24 months	35
Project corrects or prevent violations of MCLs (primary standards)[i]	
• Nitrate, nitrite, TCR	30
• Total trihalomethanes, total haloacetic acids	25
• Arsenic, selenium	20
• Other regulated contaminants	15
Project corrects or prevents exceedances of MCLs for radionuclides	35
Project corrects inadequate treatment techniques that are unable to satisfy the requirements for • Surface water • GWUDI • Groundwater	20
Project corrects exceedances of secondary drinking water standards	10
System has inadequate supply* to meet all current domestic water supply demands. *System must provide records of water usage to substantiate supply is inadequate	25
Project will correct or prevent:	
• Inadequate distribution due to system deterioration (e.g., experiencing multiple line breakages)	20
• Inadequate distribution due to chronic low pressure	15
• Inadequate storage	10
• Demand exceeding design capacity	5
Project incorporates Fluoridation	10

Affordability	Points
Median Household Income (MHI) of service area[ii]	
• <50% of State MHI	45
• Between 51% and 60% of State MHI	35
• Between 61% and 80% of State MHI	25
• Between 81% and 100% of State MHI	15
• >100% of State MHI	0

Affordability (continued)	Points
User Fees (proposed annual average residential fees/area MHI):	
• Rates are >2.0% of service area's MHI	45
• Rates are between 1.5% and 2% of the service area's MHI	35
• Rates are between 1% and 1.49%of the service area's MHI	25
• Rates are between 0.5% and 0.99% of the service area's MHI	15
• Rates are <0.5% of the service area's MHI	0
Indebtedness* = (existing debt + proposed debt)/Total ERT** MHI	
• >5% of area MHI	45
• Between 2% and 5% of area MHI	25
• <2 %of area MHI	15
*Indebtedness is based on the amount of water debt only	
**Total Equivalent Residential Taps (ERT)= Commercial ERT + Residential ERT / Average Wastewater Load from one SFE (average gal/ day)	
Population served criteria:	
• <1,000	40
• Between 1,000 and 4,999	30
• Between 5,000 and 10,000	20
• >10,000	10

CPDWR Compliance	Points
Project addresses an enforcement action by a regulatory agency and the facility is currently in violation of CPDWRs.	30
Project addresses a facility's voluntary efforts to resolve a possible violation and will mitigate the issuance of a consent order, notice of violation or other enforcement action.	20
Project is designed to maintain CPDWR compliance or to meet new requirements	15
System is currently meeting all CPDWRs	10

Source Protection and Conservation	Points
Project addresses vulnerability to potential pollution by conditions identified in an approved source water protection area assessment: • Point source discharge within a delineated area • Area impacted by agricultural chemical use or run-off • Area subject to oil/gas/mineral operations • Unprotected watershed area	15 (for one or more)
Project establishes a protective zone to address potential pollution as a result of wildfires in burn scar areas	10

Source Protection and Conservation (continued)	Points
Utility rate structure currently in place:	

Attachment II: Application of Additional Subsidization

Additional Subsidization	
Water Quality & Public Health + Affordability Score = Additional subsidization points	**Percent of Project Costs as Principal Forgiveness***
>175 points	80% principal forgiveness
125-175 points	60% principal forgiveness
100-124 points	40% principal forgiveness
<100 points	25% principal forgiveness

***No one project may receive more than 50 percent of the total amount of funds that have been set aside for additional subsidization for each fiscal year. For example, if Colorado has set aside $2 million for FY14 to be provided as additional subsidization, no project may receive more than $1 million in principal forgiveness.

Attachment III: Colorado DWRF Planning & Design Grant Model

Affordability	Points
Median Household Income (MHI) of service area	
• <40% of State MHI	20
• Between 40% and 59% of State MHI	15
• Between 60% and 80% of State MHI	10
Population served criteria:	
• <500 population	20
• 500 to 1,000 population	15
• 1,001 to 5,000 population	10
User fees (proposed annual residential fees/area MHI):	
• Rates are > 1.5% of the service area's MHI	20
• Rates are between 1% and 1.5% of the service area's MHI	15
• Rates are between 0.5% and 0.99% of the service area's MHI	10
Drinking Water Quality & Public Health	**Points**
Project will correct or prevent MCL violations (primary standards)	25
Project corrects inadequate treatment techniques that are unable to satisfy the requirements for • Surface water • GWUDI • Groundwater	20 (for one or more)
Project will correct or prevent: • Inadequate distribution due to system deterioration (e.g., experiencing multiple line breakages) • Inadequate distribution due to chronic low pressure • Inadequate storage • Demand exceeding design capacity	15 (for one or more)

In the event that two or more projects are tied, the highest affordability score will be used to break the tie. Should a tie between projects remain after sorting by the affordability, the drinking water quality and public health section will used and the tied projects will be ranked from highest to lowest for each respective category in

that section. If the tie cannot be broken through the above process, the final tie breaker will be the highest percentage of match to the total planning and/or design cost.

Attachment IV: Calculation of DWRF Loan Capacity for 2015 as of June 30, 2014

Capitalization grants for loans through 2014	$	221,125,765
Obligated for loans through 6/30/14	$	215,903,960
Remainder	$	5,221,805
Estimated 2015 Capitalization Grant	$	15,394,000
less: set asides	$	4,772,140
Total 2015 Grant	$	10,621,860
less: 2014 Grant fund used remainder 2014 (for direct loans)	$	2,186,855
less: Grant funds for expected 2014 additional subsidy	$	4,618,200
less: Grant funds for expected 2015 additional subsidy	$	4,618,200
plus: Transfer from WPCRF in 2014		-
Total grant funds available	$	4,420,410
Re-loan funds as of 06/30/14	$	6,529,435
plus: De-allocation on 9/1/14	$	11,002,960
plus: De-allocation on 9/1/15	$	12,683,673
less: Re-loan funds used for direct loans remainder of 2014	$	1,584,467
Total re-loan funds available	$	28,631,601
Loan capacity for 2015 (includes 9/1/15 de-allocation)		
Additional subsidy	$	9,236,400
Leveraged loans from grant funds X 1.40	$	6,188,574
Total	$	44,056,575

Attachment V: Cash Draw Proportionality Percentages

LL-Leverage Loan / DL-Direct Loan

Project	Loan Execution Date	Total Loan	Federal Share	Actual State Match Ratio *	Adjusted State Match Ratio**	State Share	Additional Subsidization
Colorado Springs, City of (DL)	04/29/10	$ 8,600,000	$ 7,316,229	17.55%	30.86%	$ 1,283,771	$ -
Hotchkiss, Town of (DL)	07/30/10	775,000	702,551	10.31%	30.86%	72,449	775,000
Rico, Town of	08/10/11	1,600,000	1,554,198	2.95%	30.86%	45,802	1,600,000
Swink, Town of (DL)	11/10/10	633,000	535,435	18.22%	30.86%	97,565	287,303
Rocky Ford, City of (DL)	12/13/10	2,000,000	1,998,893	0.06%	30.86%	1,107	2,000,000
Sterling, City of (DL)	03/30/11	29,000,000	15,881,203	23.70%	23.70%	3,763,845	-
Nunn, Town of (DL)	12/09/11	2,424,000	2,253,690	7.56%	30.86%	170,310	2,000,000
Rifle, City of (LL)	08/14/12	21,858,367	16,406,610	23.70%	23.70%	3,888,367	-
Louviers W&SD (DL)	10/19/12	1,139,650	973,689	17.04%	30.86%	165,961	1,139,650
Elbert W&SD (DL)	11/21/12	497,000	408,188	21.76%	30.86%	88,812	497,000
Huerfano County Gardner W&SD PID (DL)	12/05/12	593,000	469,079	26.42%	30.86%	123,921	593,000
Vilas, Town of (DL)	01/31/13	655,000	514,290	27.36%	30.86%	140,710	655,000
Vona, Town of (DL)	01/31/13	182,000	152,779	19.13%	30.86%	29,221	182,000
South Sheridan WSS&SDD (DL)	06/28/13	1,985,245	1,525,651	30.12%	30.86%	459,594	1,985,245
Evans, City of (DL)	08/12/13	1,500,000	1,146,300	30.86%	30.86%	353,700	-
Rangely, Town of (DL)	10/20/13	1,500,000	913,431	64.22%	30.86%	586,569	-
Larkspur, Town of (DL)	01/17/14	2,847,920	2,176,380	30.86%	30.86%	671,540	847,920
Kim, Town of (DL)	05/16/14	241,500	184,554	30.86%	30.86%	56,946	241,500
Clifton WD (LL)	05/29/14	14,000,000	8,432,204	27.47%	27.47%	2,316,303	-
Paonia, Town of (LL)	05/29/14	3,000,000	1,727,072	27.47%	27.47%	474,422	-
Paonia, Town of (DL)	05/29/14	847,920	665,193	27.47%	27.47%	182,727	847,920
Granby, Town of	06/11/14	741,524	581,726	27.47%	27.47%	159,798	741,524
Empire, Town of	06/13/14	847,920	665,193	27.47%	27.47%	182,727	847,920
Florissant W&SD (DL)	06/24/14	847,920	665,193	27.47%	27.47%	182,727	847,920
Larimer County LID 2013-3 (Fish Creek) (DL)	06/30/14	314,505	246,729	27.47%	27.47%	67,776	-
Total		$ 98,631,471	$ 68,096,461			$ 15,566,669	$ 16,088,902

* Actual state match drawn ratio prior to implementation of correct proportionality (for loans executed prior to January 1, 2014 -- loans executed after January 1, 2014, were allocated and draw the correct ratio).

** Beginning March 4, 2014 and going forward, state match ratio drawn on all loan project requisitions.

In the DWRF, the 20% state match required for set-aside grant draws is incorporated and obligated in the loan program. Loans are funded with and all draws are paid at a proportionality rate which includes the set-aside state match requirement. The program uses a "rolling" proportionality rate which is recalculated each time there is a change in available grant funds (awards, reductions, set-asides conversions to the loan program, etc.). Loans executed after the new calculation use the new proportionality. All loans use the proportionality rate they were funded at execution through the term of the loan.

In January, 2014, the Authority implemented new procedures to meet the EPA proportionality requirement for project/loan grant draws.

The remaining undrawn loan amounts of all loans funded with 100% grant funds prior to January 1, 2014 were adjusted to meet the proportionality requirement beginning in March, 2014 and will draw at the correct federal/state match ratio until complete.

For all grant funded loans executed January 1 through May 20, 2014 (before the 2014 federal capitalized grant award), the proportionality for each draw is 76.41% grant and 23.58% state match.

For all grant funded loans executed after May 20, 2014, the proportionality for each draw is 78.45% grant and 21.55% state match. This ratio will be used for new loans going forward until there is a change in grant funds availability, such as a new grant award. At that point, the proportionality rate will be recalculated and new grant funded loans executed after that time will use the new proportionality rate.

Attachment VI: Net Funds Available for Transfer

All dollar figures are in millions.

Year	Transaction	Banked Transfer Ceiling	Transferred from WPCRF - DWRF	Transferred from DWRF-WPCRF	WPCRF Funds Available for Transfer	DWRF Funds Available for Transfer
1997	CG Award	$5.6	---	---	$5.6*	$5.6*
1998	CG Award	8.8	---	---	8.8	8.8
1999	CG Award	12.1	---	---	12.1	12.1
1999	Transfer	12.1	$6.7**	---	5.4	18.8
2000	CG Award	15.6	---	---	8.9	22.3
2001	CG Award	19.1	---	---	12.4	25.8
2002	CG Award	23.6	---	---	16.9	30.3
2003	CG Award	28.0	---	---	21.3	34.7
2003	Transfer	28.0	---	$6.7**	28	28
2004	CG Award	32.2	---	---	32.2	32.2
2005	CG Award	36.7	---	---	36.7	36.7
2006	CG Award	41.5	---	---	41.5	41.5
2007	CG Award	46.3	---	---	46.3	46.3
2008	CG Award	51.0	---	---	51.0	51.0
2009	CG Award	55.7	---	---	55.7	55.7
2010	CG Award	75.1	---	---	75.1	75.1
2011	CG Award	80.5	---	---	80.5	80.5
2012	CG Award	85.8	---	---	85.8	85.8
2013	CG Award	90.8	---	---	90.8	90.8

***** *Transfers could not occur until one year after the DWRF had been established.*

****** *$6.7 million capitalization grant funds.*

[i] This accommodates repeat violations and provides indicators for both chronic and acute health hazards.

[ii]Current MHI for Colorado is $57,685 pursuant to 2011 Census Data. Percent of MHI will be calculated using the most current MHI data that is available. For special districts, census block MHI data will be used if available; otherwise county MHI data will be used.

[iii] The Hazardous Materials and Waste Management Division is the agency responsible for implementing the *Regulations Pertaining to the Beneficial Use of Water Treatment Sludge and Fees Applicable to the Beneficial Use of Sludges* pursuant to 5 CCR 1003-7.

Calendar of Hearings

Hearing Date/Time	Agency	Location
06/25/2015 09:00 AM	Motor Vehicle Dealer Board	Department of Revenue offices, Entrance B, Room 110, Board Commission Meeting Room, 1881 Pierce Street, Lakewood, Colorado
06/25/2015 09:00 AM	Motor Vehicle Dealer Board	Department of Revenue offices, Entrance B, Room 110, Board Commission Meeting Room, 1881 Pierce Street, Lakewood, Colorado
06/26/2015 09:00 AM	Public Utilities Commission	Colorado Public Utilities Commission, Commission Hearing Room A, 1560 Broadway Suite 250, Denver CO 80202
06/30/2015 09:30 AM	Water Quality Control Commission (1003 Series)	Sabin Conference Room, CDPHE, 4300 Cherry Creek Drive South, Denver, CO 80246
07/01/2015 09:00 AM	Taxpayer Service Division - Tax Group	1375 Sherman St., Room 127, Denver, CO 80261
07/01/2015 09:00 AM	Taxpayer Service Division - Tax Group	1375 Sherman St., Room 127, Denver, CO 80261
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07/01/2015 09:00 AM	Taxpayer Service Division - Tax Group	1375 Sherman St., Room 127, Denver, CO 80261
07/01/2015 10:00 AM	Division of Motor Vehicles	1881 Pierce Street, Lakewood, CO 80214 Room 110 Boards/Commissions Meeting Room
07/01/2015 02:00 PM	Division of Finance and Procurement	1525 Sherman St. Room 104
07/07/2015 02:00 PM	Secretary of State	Aspen Conference Room (3rd floor) of the Secretary of State's Office, 1700 Broadway, Denver CO 80290
07/08/2015 08:00 AM	Lottery Commission	720 S Colorado Blvd, Denver CO 80246
07/08/2015 08:00 AM	Lottery Commission	720 S Colorado Blvd, Denver CO 80246
07/08/2015 01:00 PM	Division of Fire Prevention and Control	690 Kipling St., Lakewood, CO 1st Floor Conference Room
07/08/2015 01:00 PM	Division of Fire Prevention and Control	690 Kipling St., Lakewood, CO 1st Floor Conference Room
07/09/2015 08:00 AM	Colorado Parks and Wildlife (405 Series, Parks)	Holiday Inn and Suites, 1129 North Summit Boulevard, Frisco, CO 80443
07/09/2015 08:00 AM	Colorado Parks and Wildlife (405 Series, Parks)	Holiday Inn and Suites, 1129 North Summit Boulevard, Frisco, CO 80443
07/09/2015 08:00 AM	Colorado Parks and Wildlife (405 Series, Parks)	Holiday Inn and Suites, 1129 North Summit Boulevard, Frisco, CO 80443
07/09/2015 08:00 AM	Colorado Parks and Wildlife (406 Series, Wildlife)	Holiday Inn and Suites, 1129 North Summit Boulevard, Frisco, CO 80443
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07/09/2015 08:00 AM	Colorado Parks and Wildlife (406 Series, Wildlife)	Holiday Inn and Suites, 1129 North Summit Boulevard, Frisco, CO 80443
07/09/2015 02:00 PM	Division of Motor Vehicles	1881 Pierce Street, Lakewood, CO 80214, Room 110 Boards/Commissions Meeting Room
07/10/2015 09:00 AM	Division of Professions and Occupations - Board of Architects, Engineers, and Land Surveyors	1560 Broadway, Ste 1250C; Denver, CO 80202
07/10/2015 09:00 AM	Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)	303 East 17th Avenue, 7th Floor, Denver, CO 80203
07/10/2015 10:00 AM	Income Maintenance (Volume 3)	Colorado Department of Human Services, 1575 Sherman Street, 8th Floor C-Stat Room, Denver, CO 80203
07/10/2015 10:00 AM	Social Services Rules (Staff Manual Volume 7; Child Welfare, Child Care Facilities)	Colorado Department of Human Services, 1575 Sherman Street, 8th Floor C-Stat Room, Denver, CO 80203
07/10/2015 11:30 AM	Behavioral Health	Colorado Department of Human Services, 1575 Sherman Street, 8th Floor C-Stat Room, Denver, CO 80203
07/15/2015 10:00 AM	Health and Environmental Information and Statistics Division - promulgated by Colo Bd of Health	Sabin-Cleere Conference Room, Colorado Department of Public Health and Environment, Bldg. A, 4300 Cherry Creek Drive, South, Denver, CO. 80246
07/15/2015 10:00 AM	Health and Environmental Information and Statistics Division - promulgated by Colo Bd of Health	Sabin-Cleere Conference Room, Colorado Department of Public Health and Environment, Bldg. A, 4300 Cherry Creek Drive, South, Denver, CO. 80246
07/15/2015 10:00 AM	Disease Control and Environmental Epidemiology Division - promulgated by Colo Bd of Health	Sabin-Cleere Conference Room, Colorado Department of Public Health and Environment, Bldg. A, 4300 Cherry Creek Drive, South, Denver, CO. 80246
07/20/2015 09:00 AM	Oil and Gas Conservation Commission	Colorado Oil and Gas Conservation Commission, 1120 Lincoln Street, Suite 801, Denver, CO 80203
08/13/2015 09:00 AM	Public Utilities Commission	Colorado Public Utilities Commission Hearing Room, 1560 Broadway, Suite 250, Denver, Colorado

Calendar of Hearings

Hearing Date/Time	Agency	Location
08/20/2015 09:00 AM	Air Quality Control Commission	Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Sabin Conference Room, Denver, CO 80246
08/20/2015 09:00 AM	Air Quality Control Commission	Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Sabin Conference Room, Denver, CO 80246
08/27/2015 09:00 AM	Passenger Tramway Safety Board	1560 Broadway, Conference Room 1250-C Denver CO 80202