

# Colorado Register



**37 CR 17**

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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](mailto:rules@sos.state.co.us).

## Notice of Rulemaking Hearing

**Tracking number**

2014-00908

**Department**

200 - Department of Revenue

**Agency**

201 - Taxpayer Service Division - Tax Group

**CCR number**

1 CCR 201-1

**Rule title**

PROCEDURE AND ADMINISTRATION

### Rulemaking Hearing

**Date**

09/30/2014

**Time**

09:00 AM

**Location**

1375 Sherman St., Room 127, Denver, CO 80261

**Subjects and issues involved**

PRIORITY OF PAYMENTS

**Statutory authority**

39-21-112(1), 39-21-102, 39-21-102 and 39-21-108, C.R.S.

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## PRIORITY OF PAYMENTS

### 39-21-103(1)

- (1) Payments received by the Department shall be applied to a taxpayer's liabilities in accordance with the following rules.
  - (a) A taxpayer can designate how a payment is to be applied to a liability owed to the Department only by remitting payment with the appropriate Departmental form (e.g., tax return, voucher or coupon). Such payment shall be applied to the type of tax, fee, or charge for which the form is filed and for the period covered by the form in the order set forth below. A designation in a cover letter or a notation on a check will not designate the liability that will be paid and such payment will be applied as set forth in paragraph 1(b).
    - (i) Tax, fee, or charge owed to the state or a local jurisdiction (in proportion to the share of the debt owed to each).
    - (ii) Related interest owed to the state or a local jurisdiction (in proportion to the share of the debt owed to each).
    - (iii) Related penalty owed to the state or a local jurisdiction (in proportion to the share of the debt owed to each).
    - (iv) Any excess payment shall be applied in accordance with paragraph (1)(b) of this rule.
  - (b) A payment remitted without an accompanying Departmental form shall be applied to the liability for the earliest debt recorded on the Department's systems in the order set forth below:
    - (i) With respect to any account for which a Statement of Account has been issued, oldest debt to newest debt and applicable interest and penalty owed to the state or a local jurisdiction (in proportion to the share of the debt owed to each).
    - (ii) With respect to any account for which a Statement of Account has not been issued: (It will only be very rare circumstances in which a debt from multiple taxes and periods exist without a Statement of Account.);
      - (A) Any International Registration Plan and applicable interest and penalty owed to the state.
      - (B) Any sales tax and applicable interest and penalty owed to the state or a local jurisdiction (in proportion to the share of the debt owed to each).
      - (C) Any other tax, oldest to newest, that is owed to the Department and applicable interest and penalty owed to the state or local jurisdiction (in proportion to the share of the debt owed to each).
    - (iii) In any event after all other liabilities have been satisfied, any existing payment plan.



- (c) This rule applies to taxes on income, sales/use, liquor, cigarette, other tobacco products, gas and special fuels, and severance, as well as periodic wage and severance tax withholding statements, estimated tax statements, annual reconciliation statements, and any other tax, fee, or charge administered by the Division of Taxation of the Department of Revenue.
  - (d) The Department rejects any provision on a check, cover letter accompanying a check, or any other document submitted to the Department by or on behalf of the taxpayer, except as specifically agreed to by the Department, that purports to be an accord and satisfaction of any liabilities owed by the taxpayer to the Department upon the presentment of the check to a bank for payment. Notwithstanding this rejection, the Department is authorized to and will present for payment any form of payment remitted.
- (2) Payments made by the Department for liabilities owed to a taxpayer, including tax refunds, shall be applied in the following order:
  - (a) Offset of liabilities owed to the Department, paid in the order set forth in paragraph (1) of this rule pursuant to §39-21-108(3), C.R.S.
  - (b) Offset of other liabilities owed by taxpayer pursuant §39-21-108(3), C.R.S.
  - (c) Offset of federal Internal Revenue Service liens and levies.
  - (d) Payment of garnishments and other court orders for debt collection duly served on the Department.
  - (e) Refund of any tax, fee or charge due to taxpayer, or to a taxpayer's spouse who has submitted a request to the Department in accordance with §39-21-108(3)(a)(I)(A), C.R.S.
  - (f) Related interest on refund due.
  - (g) Related penalty due to taxpayer pursuant to §39-22-622(3), C.R.S.
- (3) "Tax, fee, or charge" means any tax, fee or charge administered by the Department pursuant to §39-21-102, C.R.S.
- (4) A taxpayer includes both the primary and secondary individual listed on a joint return. In the case of a secondary taxpayer that has filed a request pursuant to §39-21-108(3)(a)(I)(A), C.R.S., any refund paid to the taxpayer shall be divided pursuant to §39-21-108(3)(a)(I)(A), C.R.S.

**STATEMENT OF BASIS AND PURPOSE**  
**PRIORITY OF PAYMENTS**  
**39-21-103(1)**  
**1 CCR 201-1**

**Basis**

The statutory basis for this rule is §39-21-112(1), §39-21-102, §39-21-102 and §39-21-108, C.R.S.

**Purpose**

This is a new rule that sets forth how payments to, and refunds by, the Department are applied to tax and other liabilities administered by the Division of Taxation of the Department of Revenue. This rule sets forth the general rules regarding the priority of payment but allows a taxpayer to designate (earmark) payments for a particular liability.

## Notice of Rulemaking Hearing

**Tracking number**

2014-00911

**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**

10/01/2014

**Time**

09:00 AM

**Location**

1375 Sherman St., Room 127, Denver, CO 80261

**Subjects and issues involved**

EXCHANGED TANIGBLE PERSONAL PROPERTY

**Statutory authority**

39-21-112(1) and 39-26-104, C.R.S.

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## EXCHANGED TANGIBLE PERSONAL PROPERTY

### 39-26-104(1)(B)(I)

- (1) **General Rule.** When taxable tangible personal property is received by a retailer as part or full payment for the sale of tangible personal property, sales tax shall be calculated upon the purchase price of the tangible personal property sold, minus the fair market value of the tangible personal property exchanged by the purchaser, provided the property taken by the retailer in the exchange is to be resold in the usual course of the retailer's trade or business. The general rule applies to exchanges that occur both inside and outside Colorado (e.g., motor vehicles exchanged in another state and one or both cars are subsequently registered in Colorado).
- (2) **Exceptions.** The general rule does not apply if:
  - (a) The property transferred from purchaser, or by a third party on behalf of the purchaser, to seller is not tangible personal property.
    - (i) *Examples.*
      - (A) Intangible property, such as stock certificates, and real property are not subject to sales or use tax.
      - (B) Services (because they are not property).
  - (b) Retailer does not resell, in the usual course of its business, the property transferred from purchaser.
    - (i) *Examples.*
      - (A) Retailer does not resell the property in a commercially reasonable period.
      - (B) Retailer takes a used computer from buyer in exchange for the sale of a new computer to buyer. Retailer then donates the used computer to a school. A donation does not constitute a sale and, therefore, the initial exchange does not qualify under the general rule.
      - (C) Retailer is in the business of selling only construction equipment. Buyer exchanges a boat as partial payment of its purchase of a large compressor. Retailer cannot reduce the price on which sales tax is calculated for the compressor by the fair market value of the boat even if the seller resells the boat. The resale of boats is not part of the retailer's usual course of business. Retailer and buyer also do not qualify for the vehicle exchange, even though the boat qualifies as a vehicle, because both the buyer and retailer must exchange vehicles. Therefore, both the retailer, as a licensed vendor, and buyer are liable for the sales tax on the purchase of the equipment and the retailer, as a buyer, is liable for sales tax on the fair market value of the boat (buyer would also be liable for the sales tax on the boat if buyer is a licensed retailer).

- (ii) *Exception to the Resale Requirement - Vehicles.* The resale requirement does not apply if the property transferred (exchanged) by the seller to buyer is a vehicle and the property transferred (exchanged) by the buyer to the seller is a vehicle. Both vehicles must be subject to licensing, registration, or certification by the laws of Colorado. ~~(See *Matthews v. State of Colorado* cited below).~~ "Vehicles" include:

- (A) Trailers, semi-trailers, trailer coach,
- (B) Special mobile machinery (except such machinery used solely on property of the owner),
- (C) Vehicles designed primarily to be operated or drawn on public highways, (§§42-3-103(1) and 104, C.R.S.),
- (D) Watercraft (§33-13-103, C.R.S.),
- (E) Aircraft (Colorado does not license aircraft but Colorado law requires aircraft possessed in this state be licensed by FAA) (§43-10-114(1), C.R.S.).

Purchaser, on whom the obligation to pay sales tax is levied, is the person who pays money or other consideration in addition to the exchanged vehicle. If the seller is a licensed retailer, then the retailer must collect sales tax from the ~~purchaser~~ ~~buyer~~. Persons who engage in three or more such exchanges may be required to obtain a motor vehicle dealer's license

- (c) Exchanges that do not occur at the same time and place. See, §39-26-104(1)(b).

- (i) *Examples.*

- (A) Motor vehicle dealer sells a motor vehicle to buyer, who pays cash. Two weeks later, buyer decides to sell another vehicle he owns to the dealer. Buyer cannot claim a refund for taxes paid for the first purchase because the second vehicle was not exchanged as part of the first sale.
- (B) Retailer is in the business of leasing equipment. Customer rents a forklift for 30 days and retailer and customer agree at the time the lease is signed that customer will give retailer, as part of the payment, a used compressor that retailer intends to lease to third parties. The exchange does not qualify because the use of the forklift occurs over thirty days and does not occur at the same time and place as the exchange of the compressor. In contrast, a finance lease is treated as a credit sale and not as a true lease. An exchange involving a finance lease is treated as occurring at the same time and place as the other party's exchange of property.

Cross Reference(s):

1. For additional requirements regarding the collection of tax for motor vehicles, see §39-26-113, C.R.S.
2. See, §39-26-104(1)(b)(~~I~~)(B), C.R.S. and §12-6-101, et seq., C.R.S. for laws governing motor vehicle dealer licensing.

~~3. See, Matthews v. State of Colorado, Dept. of Revenue, 193 Colo. 44, 562 P.2d 415 (1977) for additional information on out-of-state registered vehicles.~~

**STATEMENT OF BASIS AND PURPOSE**  
**EXCHANGED TANGIBLE PERSONAL PROPERTY**  
**39-26-104(1)(B)(I)**  
**1 CCR 201-4**

**Basis**

The statutory basis for this rule is §39-21-112(1) and §39-26-104, C.R.S.

**Purpose**

The purpose of this amendment is to remove the reference to *Matthews v. State of Colorado, Dept. of Revenue*, 193 Colo. 44, 562 P.2d 415 (1977) in the rule because the citation to this case is not necessary.

## Notice of Rulemaking Hearing

**Tracking number**

2014-00916

**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**

10/01/2014

**Time**

09:00 AM

**Location**

1375 Sherman St., Room 127, Denver, CO 80261

**Subjects and issues involved**

CHARITABLE ORGANIZATIONS

**Statutory authority**

39-21-112(1), 39-26-718, 39-26-102, and 39-26-725, C.R.S.

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## CHARITABLE AND OTHER EXEMPT ORGANIZATIONS

39-26-718

### (1) General Rule.

- (a) Purchases by charitable organizations are exempt from state sales and use taxes and state-administered local sales and use taxes if the purchases are part of the charitable organization's regular charitable functions and activities.
- (b) Sales by charitable organizations generally are not exempt from sales tax, except for occasional sales, sales where a portion of the purchase price is a donation, and sales by certain school-related entities.
- (c) The following are common situations where the acquisition of property by a charitable organization is not subject to sales tax.
  - (i) The charitable organization does not pay the donor for the donation (sales tax does not apply to transactions when consideration is not paid), or
  - (ii) The purchase was part of its regular charitable function and activity, or
  - (iii) The purchase was made with the intention of reselling the item at a fundraising event, in which case the charitable organization's purchase is exempt as a wholesale purchase for resale.

### (2) Types of Charitable Organizations.

- (a) Charitable organizations must [serve a public rather than a private interest and be organized and operated exclusively for one or more of the following purposes or functions](#):
  - (i) Religious;
  - (ii) Charitable;
  - (iii) Scientific;
  - (iv) Literary;
  - (v) Educational;
  - (vi) Testing for public safety;
  - (vii) Fostering national or international amateur sports competition, as long as no part of its activities involves providing athletic facilities or equipment;
  - (viii) Preventing cruelty to children or animals; ~~or~~

- (b) *Limited Purpose Charitable Organizations.* A veterans' organization registered under section 501(c)(19) of the Internal Revenue Code of 1986 is a charitable organization only when sponsoring a special event, meeting or other function in the State of Colorado ~~by any veterans' organization registered under section 501(c)(19) of the Internal Revenue Code~~, so long as such event, meeting or function is not part of such organization's regular activities in the state.
- (c) Charitable, as used in (2)(a)(ii) of this rule, is used in its generally accepted legal sense and is, therefore, not to be construed as limited by the separate enumeration of other tax-exempt purposes which may fall within the broad outlines of *charity* as developed by judicial decisions. Charitable includes:
  - (i) Relief of the poor and distressed or of the underprivileged;
  - (ii) Advancement of religion;
  - (iii) Advancement of education or science;
  - (iv) Erection or maintenance of public buildings, monuments, or works;
  - (v) Lessening of the burdens of Government;
  - (vi) Care of the sick, infirm, or aged;
  - (vii) Lessen neighborhood tensions;
  - (viii) Eliminate prejudice and discrimination;
  - (ix) Defend human and civil rights secured by law; or
  - (x) Combat community deterioration and juvenile delinquency.
- (d) Educational, as used in (2)(a)(v) of this rule, relates to:
  - (i) The instruction or training of the individual for the purpose of improving or developing his capabilities; or
  - (ii) The instruction of the public on subjects useful to the individual and beneficial to the community.
- (e) Testing for public safety, as used in (2)(a)(vi) of this rule, includes the testing of consumer products to determine whether they are safe for use by the general public.
- (f) Scientific, as used in (2)(a)(iii) of this rule, includes carrying on of scientific research in the public interest. For research to be scientific, it must be carried on in furtherance of the scientific purpose.
- (g) *IRS 501(c)(3) Certificates.* A charitable organization that holds a 501(c)(3) determination letter from the Internal Revenue Service is provisionally presumed to qualify as a charitable organization that is exempt from Colorado sales and use tax. However, the Department is not bound by an IRS determination of an organization's charitable status, and the Department may independently evaluate whether the entity qualifies as a charitable entity.

- (h) *Religious Organization.* The IRS does not require religious organizations, such as churches or synagogues, to apply for a 501(c)(3) certificate in order to qualify as a tax-exempt charitable organization. In such cases, the Department will issue a sales tax exemption certificate to a religious charitable entity, even in absence of an 501(c)(3) certificate, if the organization has a religious purpose and meets the conditions set forth below. In lieu of the 501(c)(3) certificate, a religious organization shall provide to the Department a copy of its IRS No Record of Exempt Organization letter and Department Form DR 0716, "Statement of Nonprofit Church, Synagogue, or Organization".
- (i) If the applicant is a religious organization that is an affiliate of a national organization that holds a Colorado exemption certificate, applicant may submit, in lieu of such a determination letter, documentation from the national organization demonstrating that applicant is an affiliate of such organization.
- (i) *Nonprofit Organizations.* An organization that is a nonprofit or an organization that performs some charitable services or provides funding to a qualified charitable organization does not automatically qualify as a charitable organization for sales and use tax purposes. In order to qualify, the organization must be established and operated exclusively for one or more of the charitable purposes listed above. Examples of organizations that do not typically qualify as a charitable organization for purposes of this exemption are nonprofit country clubs, private clubs, employees or social clubs or organizations, nonprofit recreational organizations, lodges, patriotic organizations (veteran organizations have a limited exemption, discussed below), fraternities, sororities, professional and trade associations, civic organizations, labor unions, political organizations, and other nonprofit entities.

(3) **Application for Exemption Certificates.**

- (a) Applicants must submit a completed application for a sales tax exemption certificate and include a copy of the organization's federal 501(c)(3) determination.
- (b) Notwithstanding a determination by the IRS of an applicant's charitable status, the Department may conduct, either before or after the issuance of an exemption certificate, an independent review of whether the organization qualifies as a charitable organization.

(4) **Restrictions on Charitable Organization Activities.**

- (a) *Exclusively.* An organization will be regarded as operating exclusively for one or more exempt purpose only if the organization exclusively engages in activities in furtherance of its exempt purpose. A charitable organization will not lose its exempt charitable status if its non-charitable activities are insubstantial.
  - (i) *Examples.*
    - (A) A religious bookstore operated by and located in a church, synagogue, or other place of worship that is marketed exclusively to its members or to visitors of the religious establishment is considered part of the regular function and activities of the organization's charitable purpose. However, if the religious organization operates a restaurant or coffee shop for the public unrelated to its charitable propose, then the organization does not qualify for the exemption because this activity is not considered part of the organization's charitable function. Note that sales by a charitable organization are not generally exempt from sales tax. For example, sales by a church in a coffee shop operated on church property are subject to sales tax even if the revenues from such sales are

insubstantial, unless the sales qualify under the occasional sale exemption or the donation exemption, discussed below.

- (B) Providing meals to the poor or homeless for free or below cost is generally considered a charitable activity.

(b) *Other Restrictions.* A charitable organization, [excluding veterans' organizations](#), is subject to the following limitations in order to qualify for the sales and use tax exemption certificate:

- (i) No part of an organization's net earnings can benefit any private shareholder or individual. [Compensation paid by the organization for services rendered, including services performed by employees or officers of the charitable organization, must be reasonable.](#)

- (A) For example, a mutual benefit society is an organization whose benefits are available only to its members and/or their beneficiaries and requires payment by its members as a condition to receiving such benefits. A mutual benefit society is not organized for a charitable purpose, and is not a charitable organization exempt from sales and use taxes under this exemption.

- (ii) No substantial part of an organization's activities can be carrying-on propaganda or otherwise attempting to influence legislation. For example, an organization whose main activity is scientific is not a charitable organization for sales and use tax purposes if a substantial portion of the organization's activities involves dissemination of propaganda that is favorable to its political objectives or consists of lobbying for legislation that supports the organization's activities and mission.
- (iii) An organization may not participate in, or intervene in, a political campaign on behalf of any candidate for public office (including the publishing or distributing of statements).

(5) **Purchases by Charitable Organizations.**

- (a) Purchases by charitable organizations are exempt from sales and use taxes if the goods or services are used exclusively in the conduct of the charitable organization's regular charitable functions and activities. Purchases must be made directly from the organization's funds and, for purchases over one-hundred dollars, must be made with a check or credit card issued in the organization's name. Purchases made with funds other than the organization's own funds or purchases made with a charitable organization's funds but reimbursed by someone who is not a qualified charitable organization are not exempt from sales or use tax. Whenever a charitable organization purchases tangible personal property (such as cards, food, cars, religious articles, etc.) that is to be transferred to anyone else for personal use and all or part of the price of the goods is recouped from the user through direct payment, donation or games of chance (but not including a sale), the organization's exempt status does not apply and sales tax must be paid to the vendor by the exempt organization. If such purchases are made outside Colorado or in Colorado without payment of Colorado sales tax, the tax must be paid directly to the Department by the organization.

- (i) *Examples.*

- (A) A purchase made on behalf of a charitable organization with a credit card issued in the name of an individual is not exempt.
    - (B) An educational charitable organization's purchase of computers is not exempt if the computers are given to members of the organization who use the computers for their own personal use or who reimburse the organization.
    - (C) An educational institution's purchase of athletic equipment or uniforms is not exempt from sales and use tax if the educational institution is reimbursed for the equipment or uniforms from students or their families.
  - (b) *Veterans' Organizations.* Purchases by veterans' organizations that are registered under section 501(c)(19) of the Internal Revenue Code are exempt only if the goods are used for a special event, meeting, or other function that is not part of the organization's regular activities in Colorado. The Department does not issue an exemption certificate to veterans' organizations. Instead, veterans' organizations must apply for a special event license for each special event or function. Veterans' organizations make exempt purchases by presenting the special events license to the vendor. ~~Sales by veteran's organizations are not exempt from sales tax.~~ Because veterans' organizations are only a charitable organization when sponsoring a special event, meeting, or other function so long as such event, meeting, or function is not part of the organization's regular activities in this state and because the occasional sales exemption requires that the funds be used in the regular course of the organization's charitable activities, sales by veterans' organizations do not qualify for the occasional sales exemption.
- (6) **Donor's Obligation for Sales and Use Tax.**
- (a) A donor who purchases tangible personal property for the purpose of donating it to a charity must pay sales or use tax on the purchase and cannot claim the charitable organization's exemption. The donor cannot claim a sale for resale exemption because the property is donated, not resold, to the charitable organization.
  - (b) A retailer who initially makes a wholesale (exempt) purchase of an item for resale (e.g., retailer buys an item for its inventory it plans to resale) and later withdraws that item from inventory and donates it to a charitable organization incurs use tax on the withdrawal from inventory. However, see the cross reference (5) for information on the exemption for donations of manufactured goods by manufacturers.
- (7) **Sales by Charitable Organization.**
- (a) *General Rule.* Sales made by charitable organizations are generally not exempt from subject to sales tax, unless the sale qualifies for the occasional sale exemption, as a donation, or for any other exemption that may apply (see paragraphs (8) and (9) of this rule). For that reason, a charitable organization that makes repeated sales of tangible personal property to the public and otherwise meets the definition of a retailer must have a sales tax license and collect and remit tax in the same manner as any other retailer. For example, a charitable organization that operates a gift or book shop, rummage store, or coffee shop must collect sales tax on sales. The fact that the merchandise sold may have been acquired by gift or donation, or that the proceeds are to be used for charitable purposes, does not make the sales exempt from tax.
  - (b) *Occasional Sale Exemption.* Occasional sales of taxable tangible personal property by a charitable organization that holds a Colorado exemption certificate are exempt from sales

and use taxes. [See paragraph \(10\), below, for information of local taxes.](#) An occasional sale must meet the following criteria:

- (i) The charitable organization conducts sales for a total of twelve days or less during a calendar year, and
  - (A) Each day a sale occurs is counted as an entire day, even if the sale occurs for less than a full day or the organization characterizes a multi-day sale as one event.
- (ii) The “net proceeds” from all these events do not exceed twenty-five thousand dollars in that calendar year. “Net proceeds” means the total gross receipt(s) minus expenses directly attributable to the event(s).
  - (A) “Directly attributable” generally means those expenses that would not have arisen but for the occurrence of the event and do not include indirect and overhead costs, such as administrative staff wages, insurance unless purchased for the specific event, rent otherwise due even if no event was held, property taxes, and other expenses that would be incurred even in the absence of the event.
  - (B) Payment by the charitable organization to acquire any goods that are later sold at a fundraising event is an expense that is deducted from the gross proceeds to determine net proceeds.
  - (C) When a charitable organization exceeds either threshold described in paragraph (7)(b)(i) or (ii), then all sales that occur in that calendar year are subject to tax, including sales in that calendar year that were previously exempt prior to the date when the threshold was exceeded. Sales tax applies to the gross proceeds, not the net proceeds. The charitable organization must have a sales tax license if and when either of these limits is exceeded.
    - (I) *Example 1.* Charitable organization conducts one auction sale which generates \$30,000 in gross proceeds and \$20,000 in net proceeds. Because neither threshold was exceeded, the charitable organization does not collect, report, or remit sales tax.
    - (II) *Example 2.* Same facts as Example No. 1, but net proceeds are \$26,000. Charitable organization has exceeded the \$25,000 threshold, and, therefore, must collect, report, and remit sales tax on the gross proceeds of \$30,000.
- (iii) The funds retained by the charitable organization are used in the course of the organization’s charitable service.
- (iv) *Living accommodations and other taxable services.* The exemption for occasional sales applies only to the sale of tangible personal property. Therefore, sales of taxable services by a charitable organization are subject to tax. For example, a charitable organization conducts a silent auction at which it auctions a weekend rental of a timeshare or hotel room. The sale of living accommodations is a sale of a service. The sale is subject to state and local sales taxes applicable to where the accommodation is located even if the

charitable organization has not exceeded the twelve day or twenty-five thousand dollar thresholds. The sale of the living accommodation is not included in the calculation of the twenty-five thousand dollar threshold.

(A) If the auction is not conducted in the same state-administered local jurisdiction in which the living accommodation is located, then the charitable organization must register with the Department for the local jurisdiction where the accommodation is located and collect the local sales taxes, including any lodging or local marketing district taxes, applicable to the rental of living accommodations.

(v) *Goods sold on consignment.* Goods given by a retailer to a charitable organization for sale at a fundraising event with the understanding that the goods will be offered for sale at a minimum price and the minimum price is paid to the retailer, and with the further understanding that the goods would be returned to the retailer if not sold at the event are subject to sales tax on the minimum price even if the twenty-five thousand dollar threshold is not met. For example, a bike shop offers a bike to a charitable organization to be sold at a fundraising auction, but the bike shop requires the charitable organization to pay the bike shop a portion of the purchase price in the event the bike is sold. The charitable organization must collect sales tax from the successful bidder for the payment made to the bike shop, even if the net proceeds from the event do not exceed the twenty-five thousand dollar threshold.

~~(vi) — *State-Administered Local Tax Jurisdictions.* State-administered cities and counties have the option to levy sales tax on occasional sales by charitable organizations. See, §29-2-105(1)(d)(I)(E), C.R.S. However, state-administered special districts, such as the Regional Transportation District, do not have the option to levy sales tax on occasional sales by charitable organizations. Charitable organizations are responsible for collecting state-administered city and county sales taxes for the local jurisdiction in which the sale occurs. If the state-administered city or county elects to tax occasional sales, then the charitable organization must obtain a Colorado sales tax license prior to such sales so that the organization can report and remit the local sales tax to the Department, even though these sales are exempt from Colorado state sales tax. Note that purchases by charitable organizations discussed in paragraph (5) must be exempted by state-administered local tax jurisdictions. Home rule cities are not governed by these rules and procedures and should be contacted directly for more information on their procedures.~~

(c) *Donations.* A portion of the purchase price for a sale made by a charitable organization may be a donation if the amount paid exceeds the fair market value of the good purchased.

(i) The exclusion of donations from the tax base applies even if the charitable organization exceeds the twelve day / twenty-five thousand dollar threshold of the occasional sale exemption. This rule also applies to state-administered local sales taxes even if the local tax jurisdiction elected to tax occasional sales of charitable organizations.

(ii) The donation amount is not included in the calculation of the twenty-five thousand dollar net proceeds threshold for the occasional sale exemption.

(iii) *Examples.*

- (A) An electronic retailer donates a laptop computer that it sells for \$700 at retail. The charitable organization offers the laptop computer at a silent auction and discloses that the fair market value of the laptop computer is \$700. The winning bid is \$1,000. \$300 is a donation not subject to tax.
- (B) Charitable organization sells 300 tickets for \$100 for a dinner and silent auction event. This is the charitable organization's only event that calendar year. Organization discloses to ticket purchasers that \$75 of the \$100 ticket price is a donation. Each dinner costs the charitable organization \$10. Charitable organization generates \$33,000 in silent auction gross sale proceeds (\$30,000 derived from the auction of taxable tangible personal property, \$1,000 from the auction of non-taxable services and gift certificates, and \$2,000 from the auction of taxable vacation rentals), \$20,000 in net proceeds from the silent auction, and \$4,500 from the sale of dinner  $((\$25 - \$10) \times 300)$ , for a total in net proceeds of \$24,500. Because the \$75 is a donation and not proceeds from a sale of what would otherwise be taxable goods, the \$22,500  $(\$75 \times 300)$  in donations from ticket sales is not added to the \$24,500 in net proceeds to determine whether the \$25,000 in net proceeds threshold is exceeded. Sales tax is not due on the net proceeds because the charity has not exceeded the \$25,000 threshold. The \$1,000 in non-taxable services and gift certificates and the \$2,000 in taxable living accommodations are excluded from the net proceeds calculations because the services and gift certificates are not taxable and the living accommodations do not qualify under the occasional sales exemption, which applies only to taxable tangible personal property and not taxable services. (Tax must be collected on the living accommodations.)
  - (I) *Local Sales Taxes.* If the state-administered local tax jurisdiction in which the sale occurred elected not to exempt occasional sales by charitable organizations, then the local tax applies to the gross proceeds from the sale of dinner and auction items, even if the organization did not exceed the \$25,000 net proceeds threshold, but local tax does not apply to the \$75 per ticket because a donation is not subject to state or local sales taxes.
- (C) Same facts as Example No. 2, except the net proceeds from the auction sale are \$23,000. Because the net proceeds threshold is exceeded  $(\$23,000 + \$4,500)$ , sale tax applies to the gross price, not just the net proceeds, for all dinners  $(\$25 \times 300)$  and to the gross price all of the sales at auction  $(\$30,000 + \$2,000)$ . Sales tax is not collected on the \$1,000 in the sales of non-taxable services and gift cards and not on the \$22,500 in donations.
- (iv) In order to claim a sales tax exemption for a donation included in the buyer's purchase price, the buyer and charitable organization must establish the following:
  - (A) the fair market value of the taxable item or service, and
  - (B) that the buyer knowingly paid in excess of the fair market value with the intent to donate that excess portion of the price to the charitable organization.



- (v) The Department will presume that the price paid for an item sold at auction is the item's fair market value and that the buyer did not knowingly pay in excess of the fair market value. These presumptions can be rebutted by reasonable evidence, such as the price for comparable goods sold by a retailer in its regular course of business and that buyer knew the fair market value of the goods at the time of the purchase. For example, the fair market value of a signed professional sports jersey sold at auction will be presumed to be the price paid by the successful bidder, but the presumption can be rebutted by documentation of the sales price of a comparable signed jersey sold to the public at the professional team's or other retail store.

(A) *Examples.*

- (I) A charitable organization holds a fundraising dinner for which patrons purchase a ticket for \$100 per person. The organization compiles information that establishes that the fair market value of the dinner is \$25 and the cost per meal is \$10. The organization establishes that purchasers knowingly paid in excess of the fair market value of the item by disclosing to patrons, at the time tickets are sold, that the fair market value of the dinner is \$25 (or that \$75 of the \$100 purchase price is a donation). State sales tax is due on the \$25 if the organization exceeded the \$25,000 net proceeds threshold.
- (II) The fair market value of an item sold at auction is not based on the cost to the organization to acquire the item. For example, a donor may donate a set of golf clubs or a night stay at a condominium to the organization to be auctioned at a fundraising event. The fair market value of the golf clubs or room is not zero even though the organization acquired the golf clubs or room for free. The fair market value is the price at which the item would sell on the open market.
- (III) A charitable organization holds a fundraising auction. The organization previously conducted concession sales and other fundraising sales for twelve days in the same year. The organization compiles information of the fair market value of each of the items sold at auction. The organization establishes that the purchaser knowingly paid in excess of the fair market value of the item by disclosing the fair market value of the auctioned items to potential bidders prior to bidding. The organization does not collect sales tax on that portion of the purchase price that exceeds the fair market value.

- (vi) The Department will presume that any donation that qualifies as a donation for federal income tax purposes also qualifies as a donation for sales tax purposes.

(8) **Parent-Teacher Associations.** Sales by associations or organizations of parents and teachers of public school students are exempt from sales tax if:

- (a) The association or organization is a charitable organization, and;
- (b) The sale proceeds are used for the benefit of a public school, an organized public school activity, or to pay reasonable expenses of the association or organization.

- (c) The exemption does not apply to sales by private schools. However, sales by private schools that qualify as charitable organizations are exempt as occasional sales or are not taxable to the extent the purchase price is a donation, or are exempt pursuant to paragraph 9, below. §39-26-718(1)(c), C.R.S. [See paragraph \(10\), below, for information on local taxes.](#)
- (d) *Occasional Sales Restrictions Do Not Apply.* This exemption applies even if the sale has exceeded the occasional sale exemption threshold (twelve days / twenty-five thousand dollar as discussed in (7)(b) "Occasional Sale Exemption"). ~~This exemption applies to state-administered local sales taxes even if the local tax jurisdiction elects to tax occasional sales of charitable organizations. See, §29-2-105(1)(d)(i)(E), C.R.S.~~
  - (i) *Example.* A public school parent-teacher association can raise funds by selling candy exempt from sales tax in order to purchase school sports uniforms. However, if the parent-teacher association is supporting a private school, its sales are taxable, unless the association is a charitable organization for educational purposes. In addition, if students reimburse the school for the uniforms, then tax must be collected on the amount paid by students.
- (9) **Sales by Public, Private Schools and Supporting Organizations.** Sales by public and private schools and supporting organizations are exempt from sales tax if the conditions described in paragraphs (a) to (d) are met. [See paragraph \(10\), below, for information on local taxes.](#)
  - (a) The school is for students in kindergarten through twelfth grade.
  - (b) Preschools, trade schools and post-secondary schools do not qualify.
  - (c) The sale is made by any of the following:
    - (i) the school;
    - (ii) an association or organization of parents and school teachers;
    - (iii) booster club or other club, group or organization whose primary ~~business~~ [purpose](#) is to support a school activity; or
    - (iv) a school class, student club, group or organization.

These organizations qualify for this exemption even if they are not charitable organizations. Examples include: concession sales by booster club or a silent auction sales conducted by a parent-teacher association or school are exempt if all the proceeds are donated to the school or school-approved student organization
  - (d) All the proceeds from the sale, except the actual cost incurred by a person or entity to acquire the good or service sold, must be donated to the school or school-approved student organization. Actual costs incurred to acquire the goods or services include, payment facility charges (rent for space, furniture or equipment), labor (wages for security, independent contractors, employees), transportation, meals, insurance, and other costs.
  - (e) Sales by a parent-teacher association that are not exempt under this paragraph (9) may, nevertheless, be as exempt if the sale meets the requirements for an exempt sale as a charitable organization or as a public school parent-teacher association or organization.

- (f) *Occasional Sales Restrictions do not apply.* This exemption applies even if the sale has exceeded the thresholds for the occasional sale exemption (twelve days / twenty-five thousand dollar as discussed in (7)(b) "Occasional Sale Exemption,"). ~~This exemption applies to state-administered local sales taxes even if the local tax jurisdiction elects to tax occasional sales of charitable organizations. See, §29-2-105(1)(d)(I)(E), C.R.S.~~
  - (g) Purchases by public schools are exempt from sales tax. §39-26-704(4), C.R.S.  
Purchases by private schools are not exempt unless the private school is a charitable organization.
- (10) **State-Administered Local Tax Jurisdictions.** State-administered cities and counties have the option to exempt from sales tax (1) occasional sales by charitable organizations, (2) sales that benefit a Colorado school, and (3) sales by an association or organization of parents and teachers of public school students that is a charitable organization. See, §29-2-105(1)(d)(I)(E), (K), and (L) C.R.S., respectively. However, state-administered special districts, such as the Regional Transportation District, do not have the option to levy sales tax on these exemptions. Unless exempt, charitable organizations are responsible for collecting state-administered city and county sales taxes for the local jurisdiction in which the sale occurs. If the state-administered city or county taxes occasional sales, then the charitable organization must obtain a Colorado sales tax license prior to such sales so that the organization can report and remit the local sales tax to the Department, even though these sales are exempt from Colorado state sales tax. Home rule cities are not governed by these rules and procedures and should be contacted directly for more information on their procedures
- (11) **Other Tax Exempt Organizations.** Other tax-exempt organizations (including governmental entities) that sell tangible personal property (for example, through a secondhand goods retail store, a fundraiser sales event or routine sales of organization-related items) must obtain a sales tax license and collect all applicable state and local sales taxes.

Cross Reference(s):

- ~~1. For information on how to document sales to tax exempt organizations, see FYI Sales 1, "How to Document Sales to Tax Exempt Organizations" available at [www.colorado.gov/revenue/tax](http://www.colorado.gov/revenue/tax) > Tax Library > FYI Publications > Sales > FYI Sales 1.~~
- ~~2. For information about local sales taxes, see FYI Sales 62, "Guidelines for Determining When to Collect State-Collected Local Sales Tax" available at [www.colorado.gov/revenue/tax](http://www.colorado.gov/revenue/tax) > Tax Library > FYI Publications > Sales > FYI Sales 62.~~
- 1. For a list of state-administered local tax jurisdictions that levy sales tax on occasional sales, see Department publication "Colorado Sales/Use Tax Rates" (DR 1002), available at [www.colorado.gov/revenue/tax](http://www.colorado.gov/revenue/tax) > Forms > Forms by Number > DR 1002.
- 2. For a list of home rule cities, see also Department publication "Colorado Sales/Use Tax Rates" (DR 1002).
- 3. For information on the exemption for donations of manufactured goods by manufacturers, see §39-26-705(2), C.R.S.
- 4. For additional information on sales related to schools, see §39-26-725, C.R.S.

7. ~~For information on out-of-state sales tax exempt organizations, see FYI Sales 3, Out-of-State Sales Tax-Exempt Organizations Doing Business in Colorado available at [www.colorado.gov/revenue/tax](http://www.colorado.gov/revenue/tax) > Tax Library > FYI Publications > Sales> FYI Sales 3.~~
8. ~~For additional information on the sales tax exemption for school related items, please see FYI Sales 86, Sales Tax Exemption on School-Related Items available at [www.colorado.gov/revenue/tax](http://www.colorado.gov/revenue/tax) > Tax Library > FYI Publications > Sales> FYI Sales 86.~~

**STATEMENT OF BASIS AND PURPOSE**  
**CHARITABLE ORGANIZATIONS**  
**39-26-718**  
**1 CCR 201-4**

**Basis**

The statutory basis for this rule is §39-21-112(1), §39-26-718, §39-26-102, and §39-26-725, C.R.S.

**Purpose**

The purpose of this amendment is to create a definition of charitable. The statute currently defines a charitable organizations as being an entity that is, among other things, charitable. Because the statute mirrors the federal definition of a charitable organization, we have incorporated their definition of charitable, education, testing for public safety and scientific into our rule. In addition, we have also added to the requirements to be a charitable organization the federal requirement, because our charitable organization definition in statute mirrors theirs, that the organization must serve a public rather than a private interest.

The Department makes clear that a veteran's organization is only a charitable organization when sponsoring a special event, meeting or other function in Colorado. In addition, the Department clarifies that because veterans' organizations are only a charitable organization when sponsoring a special event, meeting, or other function so long as such event, meeting, or function is not part of the organization's regular activities in Colorado and because the occasional sales exemption requires that the funds be used in the regular course of the organization's charitable activities, sales by veterans' organizations do not qualify for the occasional sales exemption.

Lastly, the Department has amended the State-Administered Local Tax Jurisdictions section to make clear that state-administered local tax jurisdictions can exempt from sales tax (1) occasional sales by charitable organizations, (2) sales that benefit a Colorado school, and (3) sales by an association or organization of parents and teachers of public school students that is a charitable organization. See, §29-2-105(1)(d)(I)(E), (K), and (L) C.R.S.

## Notice of Rulemaking Hearing

**Tracking number**

2014-00915

**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**

10/01/2014

**Time**

09:00 AM

**Location**

1375 Sherman St., Room 127, Denver, CO 80261

**Subjects and issues involved**

REFUND OF SALES OR USE TAX FOR VEHICLES USED IN INTERSTATE COMMERCE

**Statutory authority**

39-21-112(1), and 39-26-113.5, C.R.S.

### Contact information

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## REFUNDS OF SALES AND USE TAX FOR VEHICLES USED IN INTERSTATE COMMERCE

### 39-26-113.5

- (1) **Qualification Requirements.** The truck tractor or semitrailer must be model year 2010 or newer with a gross vehicle weight rating of fifty-four thousand pounds or greater, and must be purchased on or after July 1, 2011.  
  
~~(a) — The truck tractor or semitrailer must be model year 2010 or newer with a gross vehicle weight rating of fifty-four thousand pounds or greater, and must be purchased on or after July 1, 2011.~~  
  
~~(i) — *Exception.* If the truck tractor or semitrailer is registered in Colorado through the International Registration Plan (IRP), then the truck tractor or semitrailer is not eligible for this refund and is subject to the full amount of Colorado sales and use tax.~~
- (2) **Refund Calculation.**
  - (a) The percentage of tax to be refunded will be computed by dividing the non-Colorado miles by the total miles as used in the computation of the specific ownership tax. (Example: If the total miles driven is 10,000 with 8,000 of those Colorado miles and 2,000 non-Colorado miles, the refund percentage will be 20%.)
- (3) **Prioritization of Claims.**
  - (a) Claims will be eligible for issue based on the date they are received by the Department. Claims will be prioritized based on the date received. Once a claim has been filed, if it is not paid in the year in which it was filed, its priority will carry over to the next year. Therefore, the taxpayer need not file another claim in subsequent years. However, claims for leases must be filed for each of the 3 years as stated in paragraph (5).
- (4) **Remaining Balance to be Refunded.**
  - (a) The annual funds available for refund is limited by §42-1-225, C.R.S. Claims will be honored based on the prioritization stated in paragraph (3), above. Claims filed after the fund has been depleted will not receive a refund for that year, but may be for the year 2 and/or year 3 refund.
  - (b) In the event that more than one claim is received on the same date and the amount available in the fund is less than the total amount of the claims, the earlier purchase date will be used to determine which refund claims will be issued.
- (5) **Leases.**
  - (a) A lease term must be for more than 3 years and must be entered into after July 1, 2011 to qualify for the refund. All leases entered into prior to July 1, 2011 are not eligible for this refund.

- (b) If the total sales tax is paid at the time the vehicle is leased, then the lessee may apply for a refund of the total tax paid and the refund will be calculated in the same manner listed in paragraph (2).
- (c) If the tax is included in the lease payments, the applicant must wait until the last payment has been made for that calendar year before a refund claim can be submitted. The refund will be calculated based on the amount of tax paid in the previous calendar year. A separate refund claim must be submitted for each of the 3 years that the refund is allowed under §39-26-113.5, C.R.S.

(6) **Documentation Required to Qualify for the Refund.**

- (a) For purchases in Colorado, a copy of the retail purchase agreement from the dealer, the standard sales tax receipt (DR 0024) and any other documentation the Department requests to validate the statutory requirements for the refund.
- (b) For purchases made outside of Colorado, a copy of the purchase agreement, a copy of the county registration and any other documentation the Department requests to validate the statutory requirements for the refund.
- (c) For leases, a copy of the lease agreement, documentation stating the term of lease, the taxes paid with each lease payment and any other documentation the Department requests to validate the statutory requirements for the refund.



**STATEMENT OF BASIS AND PURPOSE  
REFUND OF SALES OR USE TAX FOR VEHICLES USED  
IN INTERSTATE COMMERCE**

**39-26-113.5**

**1 CCR 201-4**

**Basis**

The statutory basis for this rule is §39-21-112(1), and §39-26-113.5, C.R.S.

**Purpose**

The purpose of this amendment is to remove language creating an exception to vehicles that can qualify for this refund. This Department has reviewed this exception and believes the statement appears to have been an incorrect and, therefore, will remove the exception.

# Notice of Rulemaking Hearing

**Tracking number**

2014-00914

**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**

10/01/2014

**Time**

09:00 AM

**Location**

1375 Sherman St., Room 127, Denver, CO 80261

**Subjects and issues involved**

This new rule incorporates language from Department Rule 39-26-105(1)(a) that specifically discuss requirements surrounding the remittance of tax.

**Statutory authority**

39-21-112(1) and 39-26-105, C.R.S.

## Contact information

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## REMITTANCE OF TAX

### 39-26-105

(1) **Retailer Requirements.**

- (a) A retailer is liable for the total tax received from all taxable sales made in each month. The tax shall be calculated using the tax rate in effect at the time of the sale and applied to all sales, including all sales made for less than the minimum amount subject to tax.
- (b) The retailer shall file with the Department a report of their gross sales during the preceding month and shall include nontaxable sales made during such time permitted under Article 26 of Title 39. The returns and supplemental forms must be fully filled out in detail. Supplemental forms must be attached whenever necessary to demonstrate all pertinent facts.
- (b) The retailer must file their monthly return and remit any sales or use tax to the Department on the due date, unless permission has been obtained from the Department, in writing, to make quarterly, seasonal, or annual returns. Payment must be made payable to the Department by check, draft, or money order or may be made by acceptable forms of electronic payment. Cash payments should only be made by personal messenger.

(2) **Due Date of Returns.**

- (a) Bookkeeping and accounting periods ending on the last day of a month are due on the twentieth day of the following month, or the next business day if the twentieth is a Saturday, Sunday or holiday. All returns remitted after this date are delinquent.
- (b) Other accounting periods which do not end on the last day of a month are due and shall be filed on the twentieth day following the last day of the accounting period reported, or the next business day if the twentieth day is a Saturday, Sunday or holiday. All returns remitted after this date are delinquent.

(3) **Vendor's Fee.** The vendor's fee is allowed if the retailer timely files a complete tax return, all required schedules and makes full remittance of tax due.

- (a) If the retailer is delinquent in filing the tax return or any required schedules or the payment of tax, other than in unusual circumstances shown to the satisfaction of the executive director, the retailer shall not retain the vendor's fee and shall remit to the executive director an amount equal to the full amount of the tax due for the filing period.
- (b) The vendor's fee shall not apply to organizers of special sales events unless the organizer elects to obtain a sales tax license, file a sales tax return, and remit the sales tax as provided in §39-26-103(9)(b.5)(IV)(B), C.R.S.

Cross Reference(s):

1. You can find returns, schedules, etc. on the Department's website at [www.colorado.gov/revenue/tax](http://www.colorado.gov/revenue/tax) > Forms
2. For procedural information on electronic funds transfer, see Procedure and Administration Special Rule 1, EFT Payment Due.

# **STATEMENT OF BASIS AND PURPOSE**

## **REMITTANCE OF TAX**

**39-26-105**

**1 CCR 201-4**

### **Basis**

The statutory basis for this amendment is §39-21-112(1) and §39-26-105, C.R.S.

### **Purpose**

This new rule incorporates language from Department Rule 39-26-105(1)(a) that specifically discuss requirements surrounding the remittance of tax. Specifically, the rule goes into detail about the requirement of a vendor to remit any tax collected during the month, the due dates for the returns, and the vendor's fee that vendors are eligible to deduct from the sales tax they collect. Specifically, the rule states that the retailer must remit tax to the Department on sales made for less than the minimum amount subject to tax. The reason for this requirement is due to the fact that §39-26-105, C.R.S. does not contain a similar provision as that in §39-26-106, C.R.S. that requires no tax be collected on any sales of seventeen cents or less. There is no similar language in §39-26-105, C.R.S. that would remove the requirement that a retailer remit an amount equivalent to the tax rate on all sales.

The reason for creating a new rule is that the current Department Rule 39-26-105(1)(a) covers a variety of topics, some of which do not particularly fit well together. Therefore, the Department has decided to break out the information in the current Department Rule 39-26-105(1)(a) that relates to the remittance of tax and move that information into this new rule.

## Notice of Rulemaking Hearing

**Tracking number**

2014-00910

**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**

10/01/2014

**Time**

09:00 AM

**Location**

1375 Sherman St., Room 127, Denver, CO 80261

**Subjects and issues involved**

The purpose of this amendment is to amend the term Qualified Buyer to Qualified Purchaser. Qualified Purchaser is a term defined in statute so to create less confusion the Department thought it would be helpful to keep these terms consistent.

**Statutory authority**

39-21-112(1) and 39-26-103.5, C.R.S.

### Contact information

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## DIRECT PAYMENT PERMIT

### REGULATION 39-26-103.5

- (1) **General Rule.** A purchaser ~~buyer~~ who holds a direct payment permit ("Qualified Purchaser ~~Buyer~~") shall remit sales and use taxes directly to the Colorado Department of Revenue ("Department") and not to the retailer. Retailers who sell taxable goods or services to a Qualified Purchaser ~~Buyer~~ shall not collect sales tax from such purchasers ~~buyers~~.
- (2) **Qualified Purchaser ~~Buyer~~ Qualifications.** An applicant, which can be an entity or individual, for a direct payment permit must meet the following conditions.
  - (a) *Dollar Threshold.* An applicant must have had a minimum of \$7,000,000 in purchases on which Colorado state sales or use tax was owed during the twelve months preceding the application. The dollar threshold excludes purchases that are exempt from Colorado state sales and use tax, even if such purchases are subject to state-administered local sales or use taxes. See, §29-2-105, C.R.S. for a description of the local tax base. For example, the dollar threshold excludes exempt wholesale purchases of inventory. Additionally, commodities or tangible personal property that ~~are is~~ to be erected upon ~~built on~~ or affixed to real property, such as building and construction materials and fixtures ~~supplies~~, are not included in ~~determining~~ the dollar threshold. See, §39-26-103.5(1)(a), C.R.S.
  - (b) *Good Standing.* ~~If a~~An applicant ~~has been subject to any tax administered by the Department for at least three years prior to the date of the application, an applicant cannot have been delinquent in collecting, remitting, or reporting any sales, use, income, or other tax administered by the Department for the immediate three years prior to the date applicant submits its application. If a~~An applicant ~~has not been subject to any tax administered by the Department for at least three years, the applicant cannot have been will not be considered~~ delinquent in collecting, remitting, or reporting taxes for any period ~~after prior to~~ the date the applicant was first obligated to collect, remit, and report such taxes. The Department can waive this requirement if an applicant demonstrates to the satisfaction of the director or their designee that the failure to comply with the collecting, remitting, and reporting requirements was due to reasonable cause. In determining whether reasonable cause exists, the Department will consider, among other relevant aggravating and mitigating factors, whether:
    - (i) the failure was due to willful or reckless disregard of applicant's tax obligations;
    - (ii) the applicant failed to comply on more than one occasion;
    - (iii) the magnitude of the failure was significant in terms of dollars or time; and
    - (iv) the applicant made subsequent efforts to avoid future failures.
  - (c) *Accounting Systems and Practices.* An applicant must have in place an accounting system and set of practices that are acceptable to the Department. The accounting system and practices must fully and accurately report the amount of sales or use tax to be reported on the appropriate sales or use tax return(s), including state-administered local tax jurisdictions. The Department may revoke a direct payment permit ~~or~~ and may make assessments of tax, penalties, or interest if such system or practices are not adequate to enable the Department to fully and accurately collect and allocate to cities,

counties, and other local taxing entities all the sales and use taxes that the Department collects on behalf of such entities.

- (d) A Qualified **Purchaser Buyer** is not required to be subject to the collection, remittance, and reporting requirements for sales taxes in order to obtain such a permit. Rather, a Qualified **Purchaser Buyer** can be subject to the collection, remittance, and reporting requirements for any tax administered by the Department.
- (3) **Effective Date.** A direct payment permit is effective from the date of issuance until December 31 of the third year following the year in which it is issued **unless sooner revoked**.
- (4) **Purchaser-Buyer's Funds.** When a Qualified **Purchaser Buyer** uses a direct payment permit, the Qualified **Purchaser Buyer** must use its own funds when paying a retailer for a transaction to which the direct payment permit applies. Retailers cannot accept payment from persons other than the Qualified **Purchaser Buyer**, including payment from the personal funds of an individual if the permit is held in the name of an entity. Retailers must collect tax if a Qualified **Purchaser Buyer** is making a purchase with funds other than the Qualified **Purchaser-Buyer's** funds and will be liable for unpaid taxes for transactions paid in contravention of this subsection (4).
- (5) **Revocation of Permits.**
- (a) The Department may revoke a direct payment permit if the Qualified **Purchaser Buyer** violates any statute or rule governing the administration of **sales and use** taxes, or if in the opinion of the Department the Qualified **Purchaser Buyer** becomes otherwise unable to meet any of the conditions for holding a direct payment permit. The Department shall provide written notice of the revocation by first-class mail to the last known address of the Qualified **Purchaser Buyer** thirty days prior to the effective date of such revocation. The notice of revocation shall set forth:
    - (i) the factual and legal basis for revocation,
    - (ii) advise the Qualified **Purchaser Buyer** of its right to appeal, and
    - (iii) the date the Department issued the notice.
- The Department will issue a denial of a direct payment permit application in the same manner.
- (b) An applicant who is denied a permit or a Qualified **Purchaser Buyer** whose permit was revoked, may appeal the decision by submitting to the Department's executive director a written request for hearing. The notice of appeal must be received by the Department within thirty days of the date of issuance of the notice of revocation or denial and contain the permit holder's name, address, permit account number (for revocations), and the legal and factual basis explaining why the permit should not be revoked or denied. Qualified **Purchaser-Buyer's** notice of appeal shall suspend the effective date of the revocation until a final order resolving the appeal is issued by the executive director or the director's designee. The executive director or director's designee shall conduct a hearing and issue a final ruling on such appeal within a reasonable time.
- (6) **Reporting Requirements.**
- (a) A Qualified **Purchaser Buyer** holding a direct payment permit must directly remit to the Department all state and state-administered city, county and special district sales taxes that would have been collected by the retailer had the Qualified **Purchaser Buyer** purchased such goods or services without a direct payment permit.



- (i) *Exceptions.* A Qualified Purchaser Buyer holding a direct payment permit cannot pay county lodging taxes, county short-term rental taxes, and local marketing district taxes directly to the Department because such taxes are not sales taxes. Retailer must collect such taxes from the Qualified Purchaser Buyer and remit them to the Department. See, §30-11-107.5 and §30-11-107.7, C.R.S.
  - (b) A Qualified Purchaser Buyer must report and remit state and state-administered local taxes on or before the 20th day of each month following the month the Qualified Purchaser Buyer purchases taxable goods or services with a direct payment permit.
  - (c) The vendor must retain a copy of Qualified Purchaser Buyer's direct pay permit.
- (7) **Determining Local Sales Taxes.**
  - (a) *Service fees.* With regard to sales taxes only, a Qualified Purchaser Buyer may deduct from its remittance to the Department the service fee for state sales tax and any local service fee(s).
  - (b) A sale occurs when and where a Qualified Purchaser Buyer takes title or possession of the good(s) or where a taxable service is performed.
  - (c) If the Qualified Purchaser Buyer takes title or delivery of any taxable good(s) within the State of Colorado, then the Qualified Purchaser Buyer shall remit the state-administered local sales taxes for to the local jurisdiction(s) in which the Qualified Purchaser Buyer took the title or delivery.
  - (d) If the Qualified Purchaser Buyer takes title or delivery of any taxable good(s) outside the State of Colorado, then the Qualified Purchaser Buyer shall remit use tax for the location where the Qualified Purchaser Buyer first uses, stores, or consumes the goods.
  - (e) Sales and use taxes of home rule cities and counties cannot be paid by direct payment permit to the Department, unless the Department has agreed to collect such taxes.
  - (f) *Examples.*
    - (i) Qualified Purchaser Buyer takes delivery of goods at seller's store which is located in the City and County of Denver, Regional Transportation District (RTD) and Scientific and Cultural Facilities District (CD). Qualified Purchaser Buyer remits state sales tax and RTD/CD sales taxes to the Department because purchaser buyer took possession in these state-administered local tax jurisdictions. Qualified Purchaser Buyer does not remit the City and County of Denver sales taxes to the Department because Denver is a home rule city and county and the Department does not administer their local taxes.
    - (ii) Seller, who is located in Arapahoe County and in RTD/CD special districts, ships goods with its own vehicle, or engages a common carrier (e.g., United States Postal Service, UPS, or other common carrier), to Qualified Purchaser Buyer which is located in that portion of El Paso County that also includes the Pikes Peak Rural Transportation Authority. Qualified Purchaser Buyer does not remit Arapahoe County or RTD/CD special districts sales taxes because the sale does not occur in those local tax jurisdictions. Qualified Purchaser Buyer remits Colorado state, El Paso County, and Pikes Peak Rural Transportation Authority sales taxes because the sale takes place in those state-administered local tax jurisdictions.

- (iii) The same facts occur as in Example ii, except Qualified Purchaser Buyer engages a third-party transportation company to pick up the goods from seller's store. The Department will presume the third-party transportation company is acting as Qualified Purchaser-Buyer's agent and the sale occurs in the local tax jurisdiction in which the third-party takes delivery from seller. Therefore, Qualified Purchaser Buyer remits Colorado state, Arapahoe County, RTD, and CD special district sales taxes to the Department.

**STATEMENT OF BASIS AND PURPOSE**  
**DIRECT PAYMENT PERMIT**  
**39-26-103.5**  
**1 CCR 201-4**

**Basis**

The statutory basis for this rule is §39-21-112(1) and §39-26-103.5, C.R.S.

**Purpose**

The purpose of this amendment is to amend the term “Qualified Buyer” to “Qualified Purchaser.” “Qualified Purchaser” is a term defined in statute so to create less confusion the Department thought it would be helpful to keep these terms consistent. In addition, we added language in (2)(a) to reflect statute rather than simply closely reflecting statute. Lastly, there was confusion about what the language in (2)(b) meant, so the Department rewrote that section for clarity.

## Notice of Rulemaking Hearing

**Tracking number**

2014-00912

**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**

10/01/2014

**Time**

09:00 AM

**Location**

1375 Sherman St., Room 127, Denver, CO 80261

**Subjects and issues involved**

Repeal of Rule

**Statutory authority**

39-21-112(1) and 39-26-104, C.R.S.

### Contact information

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## **~~REGULATION 26-104.1(B)(I)(A).~~**

~~When a trade-in of tangible personal property is received by a retailer upon the sale of tangible personal property, the tax imposed by C.R.S. 1973, 39-26-106 shall be based upon the purchase price of the tangible personal property sold, less trade-in allowance, provided the property taken in trade is to be resold in the usual course of the retailer's trade or business. This is not limited to exchanges in Colorado. Out of state trade-in's are an allowable adjustment to the purchase price. (Matthews v. State of Colorado, Dept. of Revenue, 193 Colo. 44, 562 P.2d 415 (1977))~~

**STATEMENT OF BASIS AND PURPOSE**  
**39-26-104(1)(b)(I)(A)**  
**1 CCR 201-4**

**Basis**

The statutory basis for this rule is §39-21-112(1) and §39-26-104, C.R.S.

**Purpose**

The purpose of this amendment is to repeal the rule. The rule should have been repealed when the changes made to Department rule 39-26-104(1)(b)(I) were adopted, but repeal of this rule was not fulfilled by the Secretary of State. Therefore, the content of this rule is already in Department rule 39-26-104(1)(b)(I) and is unnecessary.

## Notice of Rulemaking Hearing

**Tracking number**

2014-00909

**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**

10/01/2014

**Time**

09:00 AM

**Location**

1375 Sherman St., Room 127, Denver, CO 80261

**Subjects and issues involved**

The purpose of this amendment is to amend the Article number in the rule to refer to Article 26 rather than 21.

**Statutory authority**

39-21-112(1) and 39-26-102, C.R.S.

### Contact information

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## DEFINITION OF TAXPAYER

### 39-26-102(17)-

"Taxpayer" means any person obligated to make a return and to pay over to the Department any tax collected or to be paid under Article ~~26~~<sup>1</sup> of Title 39, C.R.S., whether such person is a ~~licensed~~ retailer, ~~seller~~, consumer, or purchaser.



**STATEMENT OF BASIS AND PURPOSE**  
**TAXPAYER**  
**39-26-102(17)**  
**1 CCR 201-4**

**Basis**

The statutory basis for this rule is §39-21-112(1) and §39-26-102, C.R.S.

**Purpose**

The purpose of this amendment is to amend the Article number in the rule to refer to Article 26 rather than 21. In addition, the Department added “licensed” before retailer and seller to the definition of taxpayer because the Department went through the entire Article and found the circumstances in which the Article was referring to different parties who were considered taxpayers.

## Notice of Rulemaking Hearing

**Tracking number**

2014-00917

**Department**

200 - Department of Revenue

**Agency**

201 - Taxpayer Service Division - Tax Group

**CCR number**

1 CCR 201-16

**Rule title**

GASOLINE AND SPECIAL FUEL TAX

### Rulemaking Hearing

**Date**

10/01/2014

**Time**

09:00 AM

**Location**

1375 Sherman St., Room 127, Denver, CO 80261

**Subjects and issues involved**

REFUNDS OF GASOLINE AND SPECIAL FUEL TAXES

**Statutory authority**

39-21-112(1) and 39-27-103, C.R.S.

### Contact information

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## REFUNDS OF GASOLINE AND SPECIAL FUEL TAX

### REGULATION 39-27-103

#### (1) Definitions.

- (a) Account Percentage: —a percentage assigned to a particular account, representing the proportion of taxable fuel used for purposes other than the operation of a motor vehicle upon the highways of this state.
- (b) Alternate-Jurisdiction Percentage: —an exempt-use percentage used in another state.
- (c) Default Percentage: —an exempt-use percentage to be assigned to new account-holders whose activities closely mirror that of the average industry participant.
- (d) Established Account Percentage: —an exempt-use percentage previously assigned to an account by the Department of Revenue.
- (e) Industry-Group Proffered Standard: —the percentage obtained from an industry association, or other disinterested party.
- (f) Industry Segment: —a group of companies or businesses engaged in similar activities using similar vehicles and/or equipment.
- (g) Industry Segment Historical Average: —a percentage derived from the historical, non-highway fuel usage of previously established accounts identified as being in the industry.
- (h) Refund Permit Account: —an account established for an entity allowing it to claim refunds for exempt use of fuel.
- (i) Refundable Gallons: —the account percentage multiplied by the gallons purchased and used for the period.

#### (2) Qualifying Fuel. The gallons included in the percentage calculations, on the refund claims, and in all other aspects of the refund process under §39-27-103, C.R.S. can only be those upon which Colorado motor fuel excise tax was paid. Red-dyed diesel, fuel purchased in another jurisdiction, fuel purchased tax-exempt, and fuel used in vehicles licensed and plated for on-road use in Colorado does not qualify as exempt fuel.

#### ~~(3) Exempt Use of Fuel.~~

- ~~(a) Fuel used in vehicles licensed and plated for on-road use in the sState of Colorado does not qualify as exempt fuel. In the calculation for an industry percentage for exempt fuel use, the fuel is treated as taxable use. The only exception is fuel used as a power source for a qualifying exempt purpose other than powering the vehicle over the road. The fuel must have been accounted for by the Colorado Department of Revenue in the approved percentage, or with utilization and pursuant to this regulation.~~

#### (3) Establishing the Default Percentage for a Given Industry.

- (a) Based on the Department of Revenue's determination ~~as to what is~~ of the most reliable information, the default percentage shall be:

- (i) The Industry Segment Historical Average;
    - (ii) An Industry-Group Proffered Standard; or
    - (iii) An Alternate-Jurisdiction Percentage.
  - (b) The Department will calculate percentages of exempt and non-exempt fuel ("default percentages") for various industries. These percentages shall be used by the taxpayer unless the taxpayer demonstrates that a different percentage should apply. The denominator shall be the total amount of fuel used by the industry, excluding any IFTA gallonage, and the numerator shall be the amount of tax paid fuel used by the industry that qualifies for a refund but that excludes any IFTA gallonage. Fuel used for idling or for powering air conditioning and electrical systems on a vehicle are on road uses and, therefore, are not included in the numerator. However, fuel used for a power take off unit mounted on a vehicle for the refrigeration of a trailer while the trailer is attached to the vehicle, for mixing on a truck hauling concrete, or for other similar uses shall be included in the numerator. This ratio is then multiplied by the total amount of fuel purchased, including both exempt and non-exempt fuel, but excludes IFTA gallons.
  - (c) The Department of Revenue may ~~change~~ update default percentages; should it obtain information deemed to be more reliable.
- (4) **Assigning an Account Percentage to a New Account.**
- (a) ~~The A~~ default percentage shall be assigned to entities based on whose activities that closely mirror ~~those of~~ the average industry participant.
  - (b) Otherwise:
    - (i) A weighted average of the relevant industry default percentages shall be assigned to entities whose activities span more than one industry.
    - (ii) Entities whose activities are not representative of established industry segments must provide documentation enabling the Department of Revenue to assign a percentage. Documentation must include information concerning actual use of fuel, equipment used, mileage over the road, miles per gallon, etc. This documentation must span one year of activity
- (5) **Documentation for an Industry-Group Proffered Standard.**
- (a) Proposal documentation shall include:
    - (i) A definition of the segment;
    - (ii) An explanation of typical business operations for the segment;
    - (iii) Identification of the typical equipment used;
    - (iv) Information concerning any seasonal or cyclical events that might affect the industry;
    - (v) An explanation of the measuring method used. Information and testing results provided by a manufacturer may be considered ~~here~~;
    - (vi) Fuel records and other data;

- (vii) Identification of the period of time involved in the study. To be valid, a period of study must span one year, as well as any relevant cyclical or seasonal patterns.

**(6) Protests of the Assigned Percentage.**

- (a) An applicant may file a protest with the Department of Revenue if the applicant disagrees with the assigned percentage. Supporting documentation must be included with any request for a change of percentage. Documentation must include sufficient information to support an alternative percentage. Documentation must include information concerning actual use of fuel, equipment used, mileage over the road, miles per gallon, etc. This documentation must span one year of activity
- (b) Subsequent appeal procedures will be handled under the provision of §39-21-104 C.R.S and §39-21-105 C.R.S.

**(7) Audits of Accounts.**

- (a) If the Department-of Revenue, through the examination of records concerning actual use of fuel, equipment used, mileage over the road, miles per gallon, etc., of an established account holder, finds that the account has an incorrect percentage, ~~it~~ the Department may adjust the percentage both retroactively and prospectively.
- (b) The new percentage shall be arrived at as if a new account were being established.
- (c) The Department may make assessments or issue refunds using a percentage other than the default percentage for any period open for assessment if the default percentage does not fairly reflect the amount of exempt use of fuel.

**(8) Penalty.**

- (a) The Department may suspend, cancel, revoke, or deny a refund permit in accordance with the Colorado Administrative Procedures Act (§24-4-104, C.R.S.).
- (b) A taxpayer cannot claim a refund of gasoline and special fuel taxes purchased during a period in which the taxpayer's refund permit was suspended, cancelled, revoked, or denied, even if the taxpayer is subsequently granted a new or reinstated permit. However, if the taxpayer's application for refund permit is denied for reasons other than making a false statement in the application (e.g., clerical errors) or if the permit is cancelled because no refund claim was submitted for twenty-four consecutive months, then the taxpayer is not prohibited from filing a refund claim for the period the application was denied or cancelled if the taxpayer is subsequently granted a permit and the claim is otherwise valid.
- (c) Applications for a permit or claims for a refund made in violation of statute shall be denied and, as a penalty, the amount so claimed shall also be deducted from any future claim for refund. For example, any applicant for refund who makes a false statement on an application for permit or credit for refund, or submits any invoices on which erasures, changes, alterations, or additions have been made, or that are otherwise incorrect shall be denied and the penalty described above shall be applied.
- (d) The suspension of a refund permit shall be for a period not longer than one year. After the suspension period expires, the permit is automatically reinstated and taxpayer is not required to apply for a new refund permit.

- (e) Except as provided for in (8)(b), a cancellation, revocation, or denial of a refund permit shall be effective for a period of one year after which the taxpayer may apply for a new permit pursuant to (8)(f), below.
- (f) Any taxpayer whose refund permit was cancelled, revoked, or denied may apply for a new refund permit after the effective period of such cancellation, revocation, or denial has expired. The Department may impose conditions, limitations, and qualifications to the granting of a new refund permit as the Department determines, in the exercise of its discretion, are necessary to ensure the proper administration of taxes. However, if a permit was cancelled because taxpayer had not filed a refund claim for twenty-four consecutive months or if an application was denied as a result of clerical errors, then taxpayer can apply for a new permit at any time.

**(9) Change in Business Operations by an Established Account Holder.**

- (a) Entities whose business operations change, ~~such in such a manner~~ that a refund issued under the previously-set percentage would be incorrect, must notify the Department of Revenue.
- (b) The Department will require a new application.
- (c) The new application will be processed, and the previously-held account shall be closed.

**(10) Filing Quarterly Claims.**

- (a) ~~Only one c~~Claims can ~~may~~ be filed ~~each by~~ calendar quarter. Missing gallons on a claim for refund cannot be resubmitted or amended to include those missing gallons if a claim was already filed in that calendar quarter. The missing gallons shall be claimed in a subsequent calendar quarter within twelve months of the date of purchase. Gallons claimed for refund must be submitted in a claim ~~those purchased in the specified quarter.~~ postmarked within twelve months of the date of purchase or the claim will be denied.
- (b) A taxpayer cannot file a claim for refund for any period unless taxpayer holds a refund permit at the time of filing the claim for refund.

**(11) Taxpayers Holding International Fuel Tax Agreement (IFTA) Licenses.**

- (a) Taxpayers may separately file a claim for refund for nontaxable fuel used in Colorado in an IFTA-plated vehicle. Such a claim must demonstrate the actual amount of fuel used in Colorado in taxable and nontaxable applications. Taxpayers wishing to receive a refund on fuel placed in the ordinary fuel tank of a vehicle whose miles are reported on an IFTA return, ~~as allowable within the provisions of subsection 3) of this regulation,~~ must obtain an account ~~with the Department~~ specifically for this purpose.
- (b) ~~In addition, t~~Taxpayers wishing to receive a refund on fuel placed in the ordinary fuel tank of a vehicle whose miles are reported on an IFTA return, ~~as well as and also receive a refund on~~ fuel used in other equipment, must ~~file two separate refund claims – one for IFTA gallons described in this paragraph (11), and one for non-IFTA gallons described in paragraphs (1) through (10) of this rule. obtain two accounts.~~ Taxpayers ~~holding two accounts~~ must separate ~~the~~ each reported activity.
- (c) Gallons used in an IFTA-plated vehicle are not eligible for a refund using the industry default percentage as defined in paragraphs (1) through (9) of this rule.

~~(b) Taxpayers presently holding an account to receive refunds on both fuel placed in the ordinary tank of an IFTA vehicle, and upon fuel placed in other vehicles or equipment, must re-apply and obtain separate accounts.~~

(d) ~~Taxpayers~~ Out-of-state IFTA licensees holding an account upon which they shall receive a refund of fuel placed in the ordinary fuel tank of a vehicle whose miles are reported on an IFTA return must attach a copy of the corresponding IFTA return to each quarterly claim for refund.

(e) For the purposes of this ~~rule~~ regulation, the ordinary fuel tank of a vehicle is that which is drawn upon to propel the vehicle down the road.

(12) **Invoice Record-Retention Requirements ~~of Record-Retention.~~**

(a) ~~A claim for refund shall be postmarked no later than twelve months after the purchase of the fuel.~~ Invoices are the delivery tickets issued at the time of the sale and delivery. Billing invoices prepared subsequently to the sale and delivery of the fuel are not acceptable, unless accompanied by a delivery ticket. Invoices must be retained for a period of three years from the date of the purchase of the fuel, or the date of the refund claim, whichever is later. These invoices must be available for audit, or review, upon request, by the Department.

(b) Invoices must show the following information:

- (i) Dealer's name and address, and the address of the delivery;
- (ii) Purchaser's name and address;
- (iii) Correct date of sale and delivery, as to month, day, and year;
- (iv) Bill of lading number, if applicable;
- (v) Delivery ticket number;
- (vi) Type and quantity of gasoline or special fuel sold;
- (vii) Price per gallon, total amount of Colorado tax, and total amount paid.

# **COLORADO DEPARTMENT OF REVENUE**

## **STATEMENT OF BASIS AND PURPOSE**

### **REFUNDS OF GASOLINE AND SPECIAL FUEL TAXES**

**39-27-103**

**1 CCR 201-16**

#### **Basis**

The basis for this rule is §39-21-112(1) and §39-27-103, C.R.S.

#### **Purpose**

The purpose of the amendments to this rule is to clarify the language regarding the calculation of the default percentages for exempt and non-exempt use of gasoline and special fuels.

The rule also clarifies that claims for refunds can only be filed once per calendar quarter and the gasoline or special fuel does not need to be purchased in that particular quarter, but must have been purchased within twelve months from the date of the filing of the claim for refund.

The statute uses the terms cancel, suspension, and revocation of a permit or license, but does not define what each term means. The rule defines the length of time each will be effective and how to apply for a new permit or license. Currently, the Department allows anyone who has a permit to make a claim for refund of any fuel purchased within twelve months. The language in the rule makes clear that a taxpayer is unable to make any claims for refund for any period during which their permit was canceled, suspended, revoked, or denied otherwise the cancellation, suspension, revocation or denial would be fruitless.

Lastly, there are also a variety of minor grammatical and stylistic changes.



# Notice of Rulemaking Hearing

**Tracking number**

2014-00929

**Department**

200 - Department of Revenue

**Agency**

205 - Motor Vehicle Dealer Board

**CCR number**

1 CCR 205-1

**Rule title**

DEALING IN MOTOR VEHICLES

## Rulemaking Hearing

**Date**

10/23/2014

**Time**

09:00 AM

**Location**

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

**Subjects and issues involved**

Regulations 1) to reformulate procedures for the conduct of hearings, reviews and other proceedings before the Board, and, 2) to establish a new universal disclosure form and to clarify disclosure requirements for the sale of motor vehicles by dealers to consumers.

**Statutory authority**

Colorado Revised Statutes, Sections --- 6-708(1)(a), 12-6-101, 12-6-102, 12-6-103, 12-6-104, 12-6-118(3)(v), 12-6-119, 24-4-102, 24-4-104, 24-4-104.5, and, 24-4-105.

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**Proposed New Regulation 12-6-104**  
**Statement of Authority, Basis and Purpose**

**The Statutory Authority** for the adoption of this new Regulation 12-6-104 is Section 12-6-102, C.R.S., Section 12-6-103, C.R.S., Section 12-6-104, C.R.S., Section 12-6-119, C.R.S., Section 24-4-102, C.R.S., Section 24-4-104, C.R.S., Section 24-4-104.5, C.R.S., and Section 24-4-105, C.R.S.

**The Basis and Purpose** for adoption of this new regulation in the Motor Vehicle Dealer Board Regulations, and for the concomitant deletion of existing procedural regulations, is to replace the sizable number of adjudication-related Board procedures with a comprehensive procedural manual in which the Board sets out 1) those procedures generally applicable to the conduct of all hearings, reviews and other proceedings before the Board, and, 2) those procedures specifically and solely applicable to particular types of hearings, reviews and other proceedings before the Board.

**PROPOSED NEW REGULATION:**

**REGULATION 12-6-104 --- Procedural Manual Rule**

- A. THE BOARD SHALL FORMULATE PROCEDURES FOR THE CONDUCT OF HEARINGS, REVIEWS, AND OTHER PROCEEDINGS WITHIN THE BOARD’S JURISDICTION.**
- B. THE BOARD SHALL COMPILE ALL PROCEDURES REQUIRED BY THIS RULE INTO A PROCEDURAL MANUAL. THE PROCEDURAL MANUAL MAY INCLUDE INSTRUCTIONS, EXPLANATIONS, APPROVED FORMS, OR APPROVED TEMPLATES ASSOCIATED WITH CERTAIN PROCEDURES.**
- C. THE BOARD MAY, AT ANY TIME, REEXAMINE AND MAKE REVISIONS TO THE PROCEDURAL MANUAL.**
- D. ALL PROCEDURES FOR THE CONDUCT OF HEARINGS, REVIEWS, AND OTHER PROCEEDINGS WITHIN THE BOARD’S JURISDICTION IN EFFECT PRIOR TO THE PASSAGE OF THIS PROCEDURAL MANUAL RULE SHALL REMAIN IN EFFECT UNTIL THE EFFECTIVE DATE OF THE INITIAL EDITION OF THE PROCEDURAL MANUAL.**

**Proposed Deletion of Regulation 12-6-104 (3) (f)**  
**Statement of Authority, Basis and Purpose**

**The Statutory Authority** for the deletion of the existing Regulation 12-6-104 (3) (f) is Section 12-6-102, C.R.S., Section 12-6-103, C.R.S., Section 12-6-104, C.R.S., Section 12-6-119, C.R.S., Section 24-4-102, C.R.S., Section 24-4-104, C.R.S., Section 24-4-104.5, C.R.S., and Section 24-4-105, C.R.S.

**The Basis and Purpose** for the deletion of this existing procedural regulation in the Motor Vehicle Dealer Board Regulations, and for the concomitant adoption of proposed Regulation 12-6-104, is to replace the sizable number of adjudication-related Board procedures with a comprehensive procedural manual in which the Board sets out 1) those procedures generally applicable to the conduct of all hearings, reviews and other proceedings before the Board, and, 2) those procedures specifically and solely applicable to particular types of hearings, reviews and other proceedings before the Board.

**PROPOSED REGULATION TO DELETE:**

**~~REGULATION 12-6-104 (3) (f) --- HEARING PROCEDURES~~**

~~(I) The board president will normally preside at hearings before the full board, or in the president's absence, such board member as may be designated by a majority of the board members present, may preside and conduct the hearing.~~

~~(H) The presiding officer shall rule on all evidentiary and procedural matters during the course of the hearing. Rulings on motions prior to or after the hearing, and the findings, conclusions, and order shall be determined by a majority of board members present. In the event a motion is filed requesting relief from a board order, the effects of which will occur prior to the next scheduled meeting of the board, the board president may rule on said motion, and the executive secretary shall issue the written order on behalf of the board. In the absence of the president, the first vice president or second vice president may rule on any motion.~~

~~-~~

~~(HH) Prehearing discovery before a single hearing officer will normally be limited to the exchange of the name, address, and telephone number of witnesses expected to testify, a brief summary of their expected testimony, and documents intended to be introduced into evidence at hearing. The identity of witnesses and documents shall be provided by each party, and received by the other, not later than 9 calendar days prior to the hearing. Failure to comply may result, at the sole discretion of the hearing officer, in the exclusion of the witnesses and/or documents not disclosed. Any party may, at their own expense, interview identified witnesses prior to the hearing.~~

~~(IV) Discovery in hearings before the full board shall be governed by the provisions of~~

~~section 12-6-119, C.R.S.~~

~~(V) An original and 10 copies of all documents intended to be introduced into evidence at hearings before the full board shall be provided for distribution to the board and the opposing party. Respondent's and applicant's exhibits shall be marked alphabetically. The Department of Revenue's exhibits shall be marked numerically. For hearings before a single board member, each party shall provide an original and copies for the opposing side and the hearing officer.~~

~~-~~

~~(VI) License applicants shall have the burden of proof to demonstrate to the board that they meet all the qualifications for licensure. If denied a license by the board, applicants shall have the burden of proof to demonstrate that the specific reasons given in the notice of denial, should not preclude the issuance of a license. Salesperson license applicants shall provide written proof that the employing dealer is aware of the grounds giving rise to the initial license denial, and, that said dealer shall be responsible for the actions of the salesperson in the course of employment in the event that a restricted license is approved by the board.~~

~~-~~

~~(VII) Motions shall be served on the board through its executive secretary with proof of service on the opposing party. Except in the most extraordinary circumstances, motions shall be filed not later than 30 calendar days prior to the hearing. A response to any motion shall be filed within 5 business days of the filing of the initial motion. Failure to timely comply may result in the motion being denied. Motions will be considered by the board at its next opportunity. The pendency of motions shall not be cause to continue a scheduled hearing.~~

~~-~~

~~(VIII) Continuances will not be granted unless timely filed and with good cause shown. Unreasonable delay in securing legal counsel or failing to timely exercise discovery rights may not constitute "good cause", except in the most extraordinary circumstances.~~

**Proposed Revised Regulation 12-6-104(3)(k)**  
**Statement of Authority, Basis and Purpose**

**The Statutory Authority** for the adoption of this revised Regulation 12-6-104(3)(k) is Section 6-708(1)(a), C.R.S., Section 12-6-102, C.R.S., Section 12-6-103, C.R.S., Section 12-6-104, C.R.S., and, Section 12-6-118(3)(v), C.R.S.

**The Basis and Purpose** for adoption of this revised regulation in the Motor Vehicle Dealer Board Regulations is to establish a universal disclosure form for use in the sale of motor vehicles and to clarify disclosure requirements for motor vehicle dealers, used motor vehicle dealers and consumers.

**PROPOSED REVISED REGULATION:**

**REGULATION 12-6-104(3)(k)**

**A. TITLE**

- 1. DISCLOSURES REQUIRED AS PART OF A MOTOR VEHICLE SALES CONTRACT.**
- 2. ALSO REFERRED TO AS FORM 2434 OR DR2434.**

**B. DEFINITIONS**

- 1. CONTRACT --- FOR PURPOSES OF THIS REGULATION, CONTRACT SHALL MEAN ANY WRITTEN AGREEMENT BETWEEN A DEALER AND A PURCHASER FOR THE SALE OF A MOTOR VEHICLE, INCLUDING BUT NOT LIMITED TO PURCHASE ORDER, BILL OF SALE, BUYER'S ORDER, RETAIL INSTALLMENT SALES CONTRACT, AND FORM 2434.**
- 2. DEALER --- FOR PURPOSES OF THIS REGULATION, DEALER SHALL MEAN A MOTOR VEHICLE DEALER OR A USED MOTOR VEHICLE DEALER.**
- 3. DEPOSIT --- PURCHASER'S MONEY, OR OTHER THING OF VALUE, WHICH IS HELD BY THE DEALER TO HOLD A MOTOR VEHICLE UNTIL THE PAPERWORK IS COMPLETED. THE DEPOSIT MAY BE CREDITED TOWARD THE DOWN PAYMENT.**
- 4. DOWN PAYMENT --- CASH AND/OR TRADE-IN MADE AS PARTIAL PAYMENT BY THE PURCHASER AT THE TIME OF A MOTOR VEHICLE PURCHASE.**
- 5. GUARANTEE --- ANY WRITTEN DOCUMENT OR ORAL REPRESENTATION THAT WOULD**

LEAD THE PURCHASER TO HAVE A REASONABLE GOOD FAITH BELIEF THAT THE FINANCING OF THE VEHICLE IS CERTAIN.

### **C. APPLICATION**

- 1. A COMPLETED FORM 2434, IDENTICAL TO THE SAMPLE FORM 2434 ATTACHED, MUST ACCOMPANY EVERY CONTRACT FOR THE SALE OF A MOTOR VEHICLE OTHER THAN A SALE SOLELY BETWEEN DEALERS; BETWEEN WHOLESALERS; OR BETWEEN A DEALER AND A WHOLESALER.**
- 2. FORM 2434 SHALL BE SEPARATE FROM THE CONTRACT, EXCEPT TO THE EXTENT THAT THE LANGUAGE IS INCORPORATED INTO A RETAIL INSTALLMENT SALES CONTRACT, AND THE TERMS OF THE FORM SHALL BECOME PART OF THE CONTRACT TERMS.**
- 3. ONLY ONE FORM 2434 MAY BE COMPLETED AT THE TIME OF EXECUTING A CONTRACT FOR THE SALE OF A MOTOR VEHICLE. IN THE EVENT THAT A SALE CANNOT BE CONSUMMATED BECAUSE OF AN INABILITY TO OBTAIN PROPOSED FINANCING, AT THE ANNUAL PERCENTAGE RATE (APR) SET FORTH IN A FORM 2434, THE DEALER OR MOTOR VEHICLE SALESPERSON AND THE PURCHASER MAY NEGOTIATE A REVISED SALE TRANSACTION, INCLUDING MODIFIED PROPOSED FINANCING, WHICH SHALL BE SET FORTH IN A NEW FORM 2434, AND SHALL SUPERSEDE ALL PRIOR FORM 2434s. THE DEALER SHALL RETAIN ALL PRIOR EXECUTED COPIES OF FORM 2434.**
- 4. AT THE TIME OF THE EXECUTION OF A CONTRACT FOR THE SALE OF A MOTOR VEHICLE, A COPY OF THE FULLY-EXECUTED CONTRACT AND A COMPLETED FORM 2434 MUST BE PROVIDED TO THE PURCHASER, EXCEPT IF THE SALE IS SOLELY BETWEEN DEALERS; BETWEEN WHOLESALERS; OR BETWEEN A DEALER AND A WHOLESALER.**
- 5. THE DISCLOSURES REQUIRED IN PARAGRAPH D OF FORM 2434 DO NOT APPLY IF THE PURCHASER IS OBTAINING FINANCING BY OR THROUGH THE DEALERSHIP. IN THAT EVENT, PARAGRAPH D SHOULD NOT BE FILLED OUT, AND MAY BE MARKED "NA" FOR "NOT APPLICABLE" IN THE INITIALS SECTIONS.**
- 6. THE DISCLOSURES REQUIRED IN PARAGRAPHS E AND F OF FORM 2434 DO NOT APPLY IF THE PURCHASER PAYS THE FULL PRICE OF THE VEHICLE AT THE TIME OF EXECUTING THE CONTRACT. IN THAT EVENT, PARAGRAPHS E AND F SHOULD NOT BE FILLED OUT, AND MAY BE MARKED "NA" FOR "NOT APPLICABLE" IN THE INITIALS SECTIONS.**
- 7. IF PARAGRAPH E OF FORM 2434 APPLIES, THE DEALER OR MOTOR VEHICLE SALESPERSON MUST REASONABLY BELIEVE THAT, BASED UPON THE CREDITWORTHINESS OF THE PURCHASER, THE INTEREST RATE FOR ANY PROPOSED FINANCING DISCLOSED IN PARAGRAPH E IS OBTAINABLE. THE DEALER OR MOTOR VEHICLE SALESPERSON SHALL NOT MAKE ANY ORAL OR WRITTEN REPRESENTATION THAT THE DEALER OR MOTOR VEHICLE SALESPERSON WILL BE ABLE TO OBTAIN A RATE LOWER THAN THE RATE**

**DISCLOSED IN PARAGRAPH E OF FORM 2434.**

- 8. THE APR IN PARAGRAPH E OF FORM 2434 SHALL BE EQUAL TO THE APR IN THE RETAIL INSTALLMENT SALES CONTRACT SIGNED BY THE PURCHASER FOR THE SAME VEHICLE.**
- 9. THE DISCLOSURES REQUIRED IN PARAGRAPH G OF FORM 2434 DO NOT APPLY IF THE DEALER DOES NOT CHARGE THESE FEES WHEN FINANCING CANNOT BE OBTAINED. THE DEALER MAY WRITE “NA” FOR “NOT APPLICABLE” OR “ZERO” IN THE DOLLAR AND CENTS FIELDS.**

#### **D. FORMAT**

- 1. IF INCORPORATED INTO A RETAIL SALES INSTALLMENT CONTRACT, THE LANGUAGE WHICH APPEARS IN PARAGRAPHS A, B, C, D, E, F AND G OF FORM 2434 MUST APPEAR IN 12 POINT BOLD FACE TYPE OR A SIZE AT LEAST 3 POINTS LARGER THAN THE SMALLEST TYPE APPEARING IN THE FORM, WHICHEVER IS GREATER.**

#### **E. BAILMENT**

- 1. WHEN FINANCING CANNOT BE ARRANGED AT OR BELOW THE APR STATED ON THE FORM 2434, THE DEALER MUST NOTIFY THE PURCHASER WITHIN FIVE (5) CALENDAR DAYS OF REJECTION BY ANY POTENTIAL LENDER.**

**IF THE DEALER CONTINUES TO ATTEMPT TO OBTAIN ALTERNATIVE FINANCE TERMS AFTER THE INITIAL FINANCING REJECTION, THE DEALER MUST REMIND THE PURCHASER OF ANY DAILY OR USAGE RATES THAT MAY APPLY IF FINANCING CANNOT BE OBTAINED ON TERMS THAT ARE ACCEPTED BY THE PURCHASER.**

**[NOTE: The form below is part of Regulation 12-6-104(3)(k) currently. Proposed Revised Regulation 12-6-104(3)(k) deletes this form and replaces it with the Sample 2434 form displayed on the following page(s)]**

DR 2434 (11/19/07)  
 COLORADO DEPARTMENT OF REVENUE  
 AUTO INDUSTRY DIVISION  
 DENVER, CO 80261-0015  
 (303) 205-5604

## DISCLOSURES REQUIRED AS PART OF A MOTOR VEHICLE/POWERSPORTS VEHICLE SALES CONTRACT

These disclosures are required by Colorado Law unless the buyer has already been given a copy of a completed retail installment sales contract that includes all disclosures required by federal and state laws. Initialing the provisions below incorporates them into your contract to purchase a Motor Vehicle/Powersports Vehicle.

Dealer/Agent's Initials	Buyer's Initials
A. IMPORTANT NOTICE: The papers you are signing as part of this Motor Vehicle/Powersports Vehicle sale are legal documents. You should read them carefully and if there is anything you do not understand, you should seek legal assistance.	A.
B. WARNING: Only the terms and conditions written into these documents are part of the contract. Be sure that any oral representations are also written into these documents otherwise they cannot be enforced.	B.
C. Any fraud or misrepresentation in a Motor Vehicle/Powersports Vehicle sale is punishable under Colorado State Law.	C.
D. The contract is for cash. It requires you to pay the dealer \$ _____, the total balance due after your trade-in and/or deposit(s) are deducted. Failure to pay this amount by _____ may result in the loss of any deposit(s) you have paid and/or your trade vehicle.	D.
OR	
<p>Dealer has agreed to arrange financing for you and you agree to buy the Motor Vehicle/Powersports Vehicle if financing can be arranged at an interest rate that does not exceed _____ % annual percentage rate. At this percentage rate your monthly payments would be _____ per month for _____ months, until paid in full, assuming a down payment or trade worth _____. This annual percentage rate must be agreed upon by both you and the dealer. Also, you are entitled by law to complete, written disclosure of all the loan terms and the contract is not binding until you receive such a disclosure and accept the loan terms disclosed.</p>	
E. You and the dealer have agreed that the vehicle will be delivered to you prior to the purchase price being paid in full. If financing cannot be arranged at the terms stated in the contract, and the contract is cancelled, you agree to pay the dealer \$ _____ dollars per day and _____ cents per mile for your use of the vehicle from the date of delivery until the vehicle is returned to the dealer. If the contract is cancelled, it may require you to immediately return the vehicle to the dealer and to pay the cost of repair for any damage occurring to the vehicle while it is in your possession along with the agreed upon daily and mileage charges. The contract may also give the dealer the right to take the vehicle from you 24 hours after cancellation and demand for the vehicle's return. You may also be required by the contract to pay any costs the dealer may have to pay in regaining possession of the vehicle. If you owe any money from daily and mileage charges, damage repair costs or repossession costs to the dealer when the vehicle is returned, the dealer may keep your deposit(s) up to the amount owed. Otherwise, the deposit must be returned unless you have agreed that it is non-refundable.	E.

The Colorado Motor Vehicle Dealer Board has the authority to investigate all complaints arising from the sale of a Motor Vehicle/Powersports Vehicle from a licensed dealer. **Any complaints should be forwarded in writing to the Auto Industry Division on behalf of the Dealer Board to 1881 Pierce St. #142, Lakewood, CO 80214, or you may send via fax at 303-205-5977. You may visit our website at [www.revenue.state.co.us/dlr/home.asp](http://www.revenue.state.co.us/dlr/home.asp) or contact us at 303-205-5604.**

I hereby certify that I have given the buyer a copy of this disclosure.

I hereby certify that I have received a copy of this disclosure.

Dealer/Agent's Printed Name		Buyer's Printed Name	
Dealer/Agent's Signature	Date	Buyer's Signature	Date



## DISCLOSURES REQUIRED AS PART OF A MOTOR VEHICLE/POWERSPORTS VEHICLE SALES CONTRACT

### INSTRUCTIONS

These disclosures are required as part of every motor vehicle sale, other than sales solely between dealers, between wholesalers or between a dealer and a wholesaler. If the buyer has arranged independent financing or if the buyer has paid the purchase price in full at the time of the execution of the sale contract, subsections E and F below are not applicable and may be marked "NA" in the initials section. Initialing the provisions below incorporates them into your contract to purchase a Motor Vehicle/Powersports Vehicle. Fill in all blanks to the extent applicable.

Seller's  
Initials

Buyer's  
Initials

\_\_\_\_\_ **A. IMPORTANT NOTICE:** The papers you are signing as part of this Motor Vehicle/Powersports Vehicle sale are legal documents. You should read them carefully and if there is anything you do not understand, you should seek legal assistance.

\_\_\_\_\_ **B. WARNING:** Only the terms and conditions written into these documents are part of the contract. Be sure that any oral representations are also written into these documents otherwise they cannot be enforced.

\_\_\_\_\_ **C. Any fraud or misrepresentation in a Motor Vehicle/Powersports Vehicle sale is punishable under Colorado law.**

\_\_\_\_\_ **D. The contract is for cash. It requires you to pay the dealer \$ \_\_\_\_\_, the total amount due after your down payment is deducted. Failure to pay this balance by \_\_\_\_\_ may result in the loss of any down payment you have paid, including your trade-in vehicle.**

\_\_\_\_\_ **E. Dealer has agreed to use its best efforts to arrange financing for you and you agree to buy the Motor Vehicle/Powersports Vehicle if financing can be arranged at an interest rate that does not exceed \_\_\_\_\_% annual percentage rate. The dealer believes that it is possible to obtain financing on these terms. This annual percentage rate must be agreed upon by both you and the dealer. You are not required to accept different finance terms.**

\_\_\_\_\_ **F. You and the dealer have agreed that the vehicle will be delivered to you prior to the purchase price being paid in full. If financing cannot be arranged at the terms stated in the contract, THE DEALER MUST NOTIFY YOU WITHIN TEN CALENDAR DAYS of the date you sign the contract. If the contract is cancelled, you are required to return the vehicle to the dealer. The Dealer shall promptly return any down payment, including any trade-in vehicle.**

**G. THE DEALER MAY CHARGE YOU THE DAILY AND MILEAGE AMOUNTS STATED BELOW FOR THE USE OF THE VEHICLE FROM THE DATE OF DELIVERY UNTIL IT IS RETURNED. If the contract is cancelled, you agree to pay the dealer \$ \_\_\_\_\_ dollars per day and \_\_\_\_\_ cents per mile for your use of the vehicle. The contract may require you to pay the cost of repair for any damage occurring to the vehicle while it is in your possession along with the agreed upon daily and mileage charges. The**

**contract may also give the dealer the right to demand the vehicle's return and take the vehicle from you 24 hours after cancellation. The contract also may require you to pay any costs the dealer pays in regaining possession of the vehicle.**

The Colorado Motor Vehicle Dealer Board has the authority to investigate all complaints from the sale of a Motor Vehicle/Powersports Vehicle from a licensed dealer. **Any complaints should be mailed to the Colorado Dept. of Revenue, Auto Industry Division, PO Box 173350, Denver, CO 80217-3350 or delivered to the Colorado Dept. of Revenue, Auto Industry Division, 1881 Pierce St. #112, Lakewood, CO 80214, or you may send via fax at 303-205-5977. You may visit our website at [www.colorado.gov/revenue/enforcement](http://www.colorado.gov/revenue/enforcement) or contact us at 303-205-5604.**

I hereby certify that I have given the buyer a copy of this disclosure.

I hereby certify that I have received a copy of this disclosure.

Dealer/Agent's Printed Name

Buyer's Printed Name

Dealer/Agent's Signature

Date

Buyer's Signature

Date



**Proposed Deletion of Regulation 12-6-104 (3) (m) (I) (A)**  
**Statement of Authority, Basis and Purpose**

**The Statutory Authority** for the deletion of the existing Regulation 12-6-104 (3) (m) (I) (A) is Section 12-6-102, C.R.S., Section 12-6-103, C.R.S., Section 12-6-104, C.R.S., Section 12-6-119, C.R.S., Section 24-4-102, C.R.S., Section 24-4-104, C.R.S., Section 24-4-104.5, C.R.S., and Section 24-4-105, C.R.S.

**The Basis and Purpose** for the deletion of this existing procedural regulation in the Motor Vehicle Dealer Board Regulations, and for the concomitant adoption of proposed Regulation 12-6-104, is to replace the sizable number of adjudication-related Board procedures with a comprehensive procedural manual in which the Board sets out 1) those procedures generally applicable to the conduct of all hearings, reviews and other proceedings before the Board, and, 2) those procedures specifically and solely applicable to particular types of hearings, reviews and other proceedings before the Board.

**PROPOSED REGULATION TO DELETE:**

**~~REGULATION 12-6-104 (3) (m) (I) (A) --- HEARING PROCEDURES BEFORE A HEARING OFFICER~~**

**~~1. Hearings conducted before a single board member pursuant to section 12-6-104 (3)(m)(i) (a), C.R.S., shall be conducted in accordance with the Colorado Administrative Procedure act, sections 24-4-104 and 105, C.R.S., and board 12-6-104(3)(f).~~**

**~~2. The executive secretary may, on behalf of the board, assign the individual board member on a rotating basis, taking into consideration the following factors:~~**

**~~(A) Applicants for a salesperson license will normally be given expedited processing. The board member assigned will be that individual who is available and willing to conduct the hearing. Geographic location of the board member and the applicant shall have primary consideration.~~**

**~~(B) Any issue involving a complaint which may be classified as arising from a business competition issue between motor vehicle dealers, used motor vehicle dealers, or wholesalers, or, a dispute involving an alleged violation of section 12-6-108 (1) (b), C.R.S., shall not be heard by a member of the board who is a party to a~~**

~~dispute, or who has a pecuniary interest in the outcome of the matter.~~

~~(C) "Business competition issue" is defined as a dispute or complaint arising from or directly related to market share matters, or the alleged failure to comply with regulatory or statutory requirements by any one licensee of the board, or said licensee's agent, against another licensee.~~

~~(D) Initial decisions of a single board member hearing shall be processed in accordance with the Colorado Administrative Procedure Act, sections 24-4-105 (13) - (16), C.R.S.~~

**Proposed Deletion of Regulation 12-6-120 (2)**  
**Statement of Authority, Basis and Purpose**

**The Statutory Authority** for the deletion of the existing Regulation 12-6-120 (2) is Section 12-6-102, C.R.S., Section 12-6-103, C.R.S., Section 12-6-104, C.R.S., Section 12-6-119, C.R.S., Section 24-4-102, C.R.S., Section 24-4-104, C.R.S., Section 24-4-104.5, C.R.S., and Section 24-4-105, C.R.S.

**The Basis and Purpose** for the deletion of this existing procedural regulation in the Motor Vehicle Dealer Board Regulations, and for the concomitant adoption of proposed Regulation 12-6-104, is to replace the sizable number of adjudication-related Board procedures with a comprehensive procedural manual in which the Board sets out 1) those procedures generally applicable to the conduct of all hearings, reviews and other proceedings before the Board, and, 2) those procedures specifically and solely applicable to particular types of hearings, reviews and other proceedings before the Board.

**PROPOSED REGULATION TO DELETE:**

**~~REGULATION 12-6-120 (2)~~**

**~~The Board will entertain any petition for declaratory orders to terminate a controversy or to remove the uncertainty as to the applicability to any person of any statutory provisions, or of any rule or order of the Board concerned with this Article.~~**

# Notice of Rulemaking Hearing

**Tracking number**

2014-00930

**Department**

200 - Department of Revenue

**Agency**

205 - Motor Vehicle Dealer Board

**CCR number**

1 CCR 205-2

**Rule title**

DEALING IN POWERSPORTS VEHICLES

## Rulemaking Hearing

**Date**

10/23/2014

**Time**

09:00 AM

**Location**

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

**Subjects and issues involved**

Regulations 1) to reformulate procedures for the conduct of hearings, reviews and other proceedings before the Board, and, 2) to establish a new universal disclosure form and to clarify disclosure requirements for the sale of powersports vehicles by dealers to consumers.

**Statutory authority**

Colorado Revised Statutes, Sections --- 6-708(1)(a), 12-6-102, 12-6-103, 12-6-104, 12-6-119, 12-6-502, 12-6-503, 12-6-504, 12-6-520(3)(p), 24-4-102, 24-4-104, 24-4-104.5, and 24-4-105.

## Contact information

**Name**

Leland W. BeBee

**Title**

Legal Assistant

**Telephone**

303-205-5696

**Email**

leland.bebbee@state.co.us



**Proposed New Regulation 12-6-504**  
**Statement of Authority, Basis and Purpose**

**The Statutory Authority** for the adoption of this new Regulation 12-6-504 is Section 12-6-102, C.R.S., Section 12-6-103, C.R.S., Section 12-6-104, C.R.S., Section 12-6-119, C.R.S., Section 12-6-502, C.R.S., Section 12-6-503, C.R.S., Section 12-6-504, C.R.S., Section 24-4-102, C.R.S., Section 24-4-104, C.R.S., Section 24-4-104.5, C.R.S., and Section 24-4-105, C.R.S.

**The Basis and Purpose** for adoption of this new regulation in the Motor Vehicle Dealer Board Regulations, and for the concomitant deletion of existing procedural regulations, is to replace the sizable number of adjudication-related Board procedures with a comprehensive procedural manual in which the Board sets out 1) those procedures generally applicable to the conduct of all hearings, reviews and other proceedings before the Board, and, 2) those procedures specifically and solely applicable to particular types of hearings, reviews and other proceedings before the Board.

**PROPOSED NEW REGULATION:**

**REGULATION 12-6-504 --- Procedural Manual Rule**

- A. THE BOARD SHALL FORMULATE PROCEDURES FOR THE CONDUCT OF HEARINGS, REVIEWS, AND OTHER PROCEEDINGS WITHIN THE BOARD’S JURISDICTION.**
- B. THE BOARD SHALL COMPILE ALL PROCEDURES REQUIRED BY THIS RULE INTO A PROCEDURAL MANUAL. THE PROCEDURAL MANUAL MAY INCLUDE INSTRUCTIONS, EXPLANATIONS, APPROVED FORMS, OR APPROVED TEMPLATES ASSOCIATED WITH CERTAIN PROCEDURES.**
- C. THE BOARD MAY, AT ANY TIME, REEXAMINE AND MAKE REVISIONS TO THE PROCEDURAL MANUAL.**
- D. ALL PROCEDURES FOR THE CONDUCT OF HEARINGS, REVIEWS, AND OTHER PROCEEDINGS WITHIN THE BOARD’S JURISDICTION IN EFFECT PRIOR TO THE PASSAGE OF THIS PROCEDURAL MANUAL RULE SHALL REMAIN IN EFFECT UNTIL THE EFFECTIVE DATE OF THE INITIAL EDITION OF THE PROCEDURAL MANUAL.**

**Proposed Revised Regulation 12-6-504(1)(m)**  
**Statement of Authority, Basis and Purpose**

**The Statutory Authority** for the adoption of this revised Regulation 12-6-504(1)(m) is Section 6-708(1)(a), C.R.S., Section 12-6-102, C.R.S., Section 12-6-103, C.R.S., Section 12-6-104, C.R.S., Section 12-6-502, C.R.S., Section 12-6-503, C.R.S., Section 12-6-504, C.R.S., and Section 12-6-520(3)(p), C.R.S.

**The Basis and Purpose** for adoption of this revised regulation in the Motor Vehicle Dealer Board Regulations is to establish a universal disclosure form for use in the sale of powersports vehicles and to clarify disclosure requirements for powersports vehicle dealers, used powersports vehicle dealers and consumers.

**PROPOSED REVISED REGULATION:**

**REGULATION 12-6-504(1)(m)**

**A. TITLE**

- 1. DISCLOSURES REQUIRED AS PART OF A POWERSPORTS VEHICLE SALES CONTRACT.**
- 2. ALSO REFERRED TO AS FORM 2434 OR DR2434.**

**B. DEFINITIONS**

- 1. CONTRACT --- FOR PURPOSES OF THIS REGULATION, CONTRACT SHALL MEAN ANY WRITTEN AGREEMENT BETWEEN A DEALER AND A PURCHASER FOR THE SALE OF A POWERSPORTS VEHICLE, INCLUDING BUT NOT LIMITED TO PURCHASE ORDER, BILL OF SALE, BUYER'S ORDER, RETAIL INSTALLMENT SALES CONTRACT, AND FORM 2434.**
- 2. DEALER --- FOR PURPOSES OF THIS REGULATION, DEALER SHALL MEAN A POWERSPORTS VEHICLE DEALER OR A USED POWERSPORTS VEHICLE DEALER.**
- 3. DEPOSIT --- PURCHASER'S MONEY, OR OTHER THING OF VALUE, WHICH IS HELD BY THE DEALER TO HOLD A POWERSPORTS VEHICLE UNTIL THE PAPERWORK IS COMPLETED. THE DEPOSIT MAY BE CREDITED TOWARD THE DOWN PAYMENT.**
- 4. DOWN PAYMENT --- CASH AND/OR TRADE-IN MADE AS PARTIAL PAYMENT BY THE PURCHASER AT THE TIME OF A POWERSPORTS VEHICLE PURCHASE.**

5. **GUARANTEE --- ANY WRITTEN DOCUMENT OR ORAL REPRESENTATION THAT WOULD LEAD THE PURCHASER TO HAVE A REASONABLE GOOD FAITH BELIEF THAT THE FINANCING OF THE VEHICLE IS CERTAIN.**
6. **SALE OF A POWERSPORTS VEHICLE --- FOR PURPOSES OF SECTIONS 12-6-504(1)(m)(I)(E) AND 12-6-504(1)(m)(II), C.R.S., THE SALE SHALL BE DEEMED CONSUMMATED AT THE TIME OF THE EXECUTION OF THE CONTRACT FOR THE SALE OF A POWERSPORTS VEHICLE BY A DEALER AND A PURCHASER.**

### **C. APPLICATION**

1. **A COMPLETED FORM 2434, IDENTICAL TO THE SAMPLE FORM 2434 ATTACHED, MUST ACCOMPANY EVERY CONTRACT FOR THE SALE OF A POWERSPORTS VEHICLE OTHER THAN A SALE SOLELY BETWEEN DEALERS; BETWEEN WHOLESALERS; OR BETWEEN A DEALER AND A WHOLESALER.**
2. **FORM 2434 SHALL BE SEPARATE FROM THE CONTRACT, EXCEPT TO THE EXTENT THAT THE LANGUAGE IS INCORPORATED INTO A RETAIL INSTALLMENT SALES CONTRACT, AND THE TERMS OF THE FORM SHALL BECOME PART OF THE CONTRACT TERMS.**
3. **ONLY ONE FORM 2434 MAY BE COMPLETED AT THE TIME OF EXECUTING A CONTRACT FOR THE SALE OF A POWERSPORTS VEHICLE. IN THE EVENT THAT A SALE CANNOT BE CONSUMMATED BECAUSE OF AN INABILITY TO OBTAIN PROPOSED FINANCING ON THE TERMS SET FORTH IN A FORM 2434, THE DEALER OR POWERSPORTS VEHICLE SALESPERSON AND THE PURCHASER MAY NEGOTIATE A REVISED SALE TRANSACTION, INCLUDING MODIFIED PROPOSED FINANCING, AND SHALL ALSO COMPLETE A NEW FORM 2434, AND SHALL SUPERSEDE ALL PRIOR FORM 2434s. THE DEALER SHALL RETAIN ALL PRIOR EXECUTED COPIES OF FORM 2434.**
4. **AT THE TIME OF THE EXECUTION OF A CONTRACT FOR THE SALE OF A POWERSPORTS VEHICLE, A COPY OF THE FULLY-EXECUTED CONTRACT AND A COMPLETED FORM 2434 MUST BE PROVIDED TO THE PURCHASER, EXCEPT IF THE SALE IS SOLELY BETWEEN DEALERS; BETWEEN WHOLESALERS; OR BETWEEN A DEALER AND A WHOLESALER.**
5. **THE DISCLOSURES REQUIRED IN PARAGRAPH D OF FORM 2434 DO NOT APPLY IF THE PURCHASER IS OBTAINING FINANCING BY OR THROUGH THE DEALERSHIP. IN THAT EVENT, PARAGRAPH D SHOULD NOT BE FILLED OUT, AND MAY BE MARKED “NA” FOR “NOT APPLICABLE” IN THE INITIALS SECTIONS.**
6. **THE DISCLOSURES REQUIRED IN PARAGRAPHS E AND F OF FORM 2434 DO NOT APPLY IF THE PURCHASER PAYS THE FULL PRICE OF THE VEHICLE AT THE TIME OF EXECUTING THE CONTRACT. IN THAT EVENT, PARAGRAPHS E AND F SHOULD NOT BE FILLED OUT, AND MAY BE MARKED “NA” FOR “NOT APPLICABLE” IN THE INITIALS SECTIONS.**

7. **IF PARAGRAPH E OF FORM 2434 APPLIES, THE DEALER OR POWERSPORTS VEHICLE SALESPERSON MUST REASONABLY BELIEVE THAT, BASED UPON THE CREDITWORTHINESS OF THE PURCHASER, THE INTEREST RATE FOR ANY PROPOSED FINANCING DISCLOSED IN PARAGRAPH E IS OBTAINABLE. THE DEALER OR POWERSPORTS VEHICLE SALESPERSON SHALL NOT MAKE ANY ORAL OR WRITTEN REPRESENTATION THAT THE DEALER OR POWERSPORTS VEHICLE SALESPERSON WILL BE ABLE TO OBTAIN A RATE LOWER THAN THE RATE DISCLOSED IN PARAGRAPH E OF FORM 2434.**
8. **THE APR IN PARAGRAPH E OF FORM 2434 SHALL BE EQUAL TO THE APR IN THE RETAIL INSTALLMENT SALES CONTRACT SIGNED BY THE PURCHASER FOR THE SAME VEHICLE.**
9. **THE DISCLOSURES REQUIRED IN PARAGRAPH G OF FORM 2434 DO NOT APPLY IF THE DEALER DOES NOT CHARGE THESE FEES WHEN FINANCING CANNOT BE OBTAINED. THE DEALER MAY WRITE “NA” FOR “NOT APPLICABLE” OR “ZERO” IN THE DOLLAR AND CENTS FIELDS.**

#### **D. FORMAT**

1. **IF INCORPORATED INTO A RETAIL SALES INSTALLMENT CONTRACT, THE LANGUAGE WHICH APPEARS IN PARAGRAPHS A, B, C, D, E, F AND G OF FORM 2434 MUST APPEAR IN 12 POINT BOLD FACE TYPE OR A SIZE AT LEAST 3 POINTS LARGER THAN THE SMALLEST TYPE APPEARING IN THE FORM, WHICHEVER IS GREATER.**

#### **E. BAILMENT**

1. **WHEN FINANCING CANNOT BE ARRANGED AT OR BELOW THE APR STATED ON THE FORM 2434, THE DEALER MUST NOTIFY THE PURCHASER WITHIN FIVE (5) CALENDAR DAYS OF REJECTION BY ANY POTENTIAL LENDER.**

**IF THE DEALER CONTINUES TO ATTEMPT TO OBTAIN ALTERNATIVE FINANCE TERMS AFTER THE INITIAL FINANCING REJECTION, THE DEALER MUST REMIND THE PURCHASER OF ANY DAILY OR USAGE RATES THAT MAY APPLY IF FINANCING CANNOT BE OBTAINED ON TERMS THAT ARE ACCEPTED BY THE PURCHASER.**

**[NOTE: The form below is part of Regulation 12-6-504(1)(m) currently. Proposed Revised Regulation 12-6-504(1)(m) deletes this form and replaces it with the Sample 2434 form displayed on the following page(s)]**

DR 2434 (11/19/07)  
 COLORADO DEPARTMENT OF REVENUE  
 AUTO INDUSTRY DIVISION  
 DENVER, CO 80261-0015  
 (303) 205-5604

## DISCLOSURES REQUIRED AS PART OF A MOTOR VEHICLE/POWERSPORTS VEHICLE SALES CONTRACT

These disclosures are required by Colorado Law unless the buyer has already been given a copy of a completed retail installment sales contract that includes all disclosures required by federal and state laws. Initialing the provisions below incorporates them into your contract to purchase a Motor Vehicle/Powersports Vehicle.

Dealer/Agent's Initials	Buyer's Initials
A. IMPORTANT NOTICE: The papers you are signing as part of this Motor Vehicle/Powersports Vehicle sale are legal documents. You should read them carefully and if there is anything you do not understand, you should seek legal assistance.	A.
B. WARNING: Only the terms and conditions written into these documents are part of the contract. Be sure that any oral representations are also written into these documents otherwise they cannot be enforced.	B.
C. Any fraud or misrepresentation in a Motor Vehicle/Powersports Vehicle sale is punishable under Colorado State Law.	C.
D. The contract is for cash. It requires you to pay the dealer \$ _____, the total balance due after your trade-in and/or deposit(s) are deducted. Failure to pay this amount by _____ may result in the loss of any deposit(s) you have paid and/or your trade vehicle.	D.
OR	
<p>Dealer has agreed to arrange financing for you and you agree to buy the Motor Vehicle/Powersports Vehicle if financing can be arranged at an interest rate that does not exceed _____ % annual percentage rate. At this percentage rate your monthly payments would be _____ per month for _____ months, until paid in full, assuming a down payment or trade worth _____. This annual percentage rate must be agreed upon by both you and the dealer. Also, you are entitled by law to complete, written disclosure of all the loan terms and the contract is not binding until you receive such a disclosure and accept the loan terms disclosed.</p>	
E. You and the dealer have agreed that the vehicle will be delivered to you prior to the purchase price being paid in full. If financing cannot be arranged at the terms stated in the contract, and the contract is cancelled, you agree to pay the dealer \$ _____ dollars per day and _____ cents per mile for your use of the vehicle from the date of delivery until the vehicle is returned to the dealer. If the contract is cancelled, it may require you to immediately return the vehicle to the dealer and to pay the cost of repair for any damage occurring to the vehicle while it is in your possession along with the agreed upon daily and mileage charges. The contract may also give the dealer the right to take the vehicle from you 24 hours after cancellation and demand for the vehicle's return. You may also be required by the contract to pay any costs the dealer may have to pay in regaining possession of the vehicle. If you owe any money from daily and mileage charges, damage repair costs or repossession costs to the dealer when the vehicle is returned, the dealer may keep your deposit(s) up to the amount owed. Otherwise, the deposit must be returned unless you have agreed that it is non-refundable.	E.

The Colorado Motor Vehicle Dealer Board has the authority to investigate all complaints arising from the sale of a Motor Vehicle/Powersports Vehicle from a licensed dealer. **Any complaints should be forwarded in writing to the Auto Industry Division on behalf of the Dealer Board to 1881 Pierce St. #142, Lakewood, CO 80214, or you may send via fax at 303-205-5977. You may visit our website at [www.revenue.state.co.us/dlr/home.asp](http://www.revenue.state.co.us/dlr/home.asp) or contact us at 303-205-5604.**

I hereby certify that I have given the buyer a copy of this disclosure.

I hereby certify that I have received a copy of this disclosure.

Dealer/Agent's Printed Name		Buyer's Printed Name	
Dealer/Agent's Signature	Date	Buyer's Signature	Date

## DISCLOSURES REQUIRED AS PART OF A MOTOR VEHICLE/POWERSPORTS VEHICLE SALES CONTRACT

### INSTRUCTIONS

These disclosures are required as part of every motor vehicle sale, other than sales solely between dealers, between wholesalers or between a dealer and a wholesaler. If the buyer has arranged independent financing or if the buyer has paid the purchase price in full at the time of the execution of the sale contract, subsections E and F below are not applicable and may be marked "NA" in the initials section. Initialing the provisions below incorporates them into your contract to purchase a Motor Vehicle/Powersports Vehicle. Fill in all blanks to the extent applicable.

Seller's  
Initials

Buyer's  
Initials

\_\_\_\_\_ **A. IMPORTANT NOTICE:** The papers you are signing as part of this Motor Vehicle/Powersports Vehicle sale are legal documents. You should read them carefully and if there is anything you do not understand, you should seek legal assistance.

\_\_\_\_\_ **B. WARNING:** Only the terms and conditions written into these documents are part of the contract. Be sure that any oral representations are also written into these documents otherwise they cannot be enforced.

\_\_\_\_\_ **C. Any fraud or misrepresentation in a Motor Vehicle/Powersports Vehicle sale is punishable under Colorado law.**

\_\_\_\_\_ **D. The contract is for cash. It requires you to pay the dealer \$ \_\_\_\_\_, the total amount due after your down payment is deducted. Failure to pay this balance by \_\_\_\_\_ may result in the loss of any down payment you have paid, including your trade-in vehicle.**

\_\_\_\_\_ **E. Dealer has agreed to use its best efforts to arrange financing for you and you agree to buy the Motor Vehicle/Powersports Vehicle if financing can be arranged at an interest rate that does not exceed \_\_\_\_\_% annual percentage rate. The dealer believes that it is possible to obtain financing on these terms. This annual percentage rate must be agreed upon by both you and the dealer. You are not required to accept different finance terms.**

\_\_\_\_\_ **F. You and the dealer have agreed that the vehicle will be delivered to you prior to the purchase price being paid in full. If financing cannot be arranged at the terms stated in the contract, THE DEALER MUST NOTIFY YOU WITHIN TEN CALENDAR DAYS of the date you sign the contract. If the contract is cancelled, you are required to return the vehicle to the dealer. The Dealer shall promptly return any down payment, including any trade-in vehicle.**

**G. THE DEALER MAY CHARGE YOU THE DAILY AND MILEAGE AMOUNTS STATED BELOW FOR THE USE OF THE VEHICLE FROM THE DATE OF DELIVERY UNTIL IT IS RETURNED. If the contract is cancelled, you agree to pay the dealer \$ \_\_\_\_\_ dollars per day and \_\_\_\_\_ cents per mile for your use of the vehicle. The contract may require you to pay the cost of repair for any damage occurring to the vehicle while it is in your possession along with the agreed upon daily and mileage charges. The**

**contract may also give the dealer the right to demand the vehicle's return and take the vehicle from you 24 hours after cancellation. The contract also may require you to pay any costs the dealer pays in regaining possession of the vehicle.**

The Colorado Motor Vehicle Dealer Board has the authority to investigate all complaints from the sale of a Motor Vehicle/Powersports Vehicle from a licensed dealer. **Any complaints should be mailed to the Colorado Dept. of Revenue, Auto Industry Division, PO Box 173350, Denver, CO 80217-3350 or delivered to the Colorado Dept. of Revenue, Auto Industry Division, 1881 Pierce St. #112, Lakewood, CO 80214, or you may send via fax at 303-205-5977. You may visit our website at [www.colorado.gov/revenue/enforcement](http://www.colorado.gov/revenue/enforcement) or contact us at 303-205-5604.**

I hereby certify that I have given the buyer a copy of this disclosure.

I hereby certify that I have received a copy of this disclosure.

Dealer/Agent's Printed Name

Buyer's Printed Name

Dealer/Agent's Signature

Date

Buyer's Signature

Date



**Proposed Deletion of Regulation 12-6-521 (2)**  
**Statement of Authority, Basis and Purpose**

**The Statutory Authority** for the deletion of the existing Regulation 12-6-521 (2) is Section 12-6-102, C.R.S., Section 12-6-103, C.R.S., Section 12-6-104, C.R.S., Section 12-6-119, C.R.S., Section 12-6-502, C.R.S., Section 12-6-503, C.R.S., Section 12-6-504, C.R.S., Section 24-4-102, C.R.S., Section 24-4-104, C.R.S., Section 24-4-104.5, C.R.S., and Section 24-4-105, C.R.S.

**The Basis and Purpose** for the deletion of this existing procedural regulation in the Motor Vehicle Dealer Board Regulations, and for the concomitant adoption of proposed Regulation 12-6-504, is to replace the sizable number of adjudication-related Board procedures with a comprehensive procedural manual in which the Board sets out 1) those procedures generally applicable to the conduct of all hearings, reviews and other proceedings before the Board, and, 2) those procedures specifically and solely applicable to particular types of hearings, reviews and other proceedings before the Board.

**PROPOSED REGULATION TO DELETE:**

**~~REGULATION 12-6-(521) (2) --- HEARING PROCEDURES~~**

~~(I) The board president will normally preside at hearings before the full board, or in the president's absence, such board member as may be designated by a majority of the board members present, may preside and conduct the hearing.~~

~~(II) The presiding officer shall rule on all evidentiary and procedural matters during the course of the hearing. Rulings on motions prior to or after the hearing, and the findings, conclusions, and order shall be determined by a majority of board members present. In the event a motion is filed requesting relief from a board order, the effects of which will occur prior to the next scheduled meeting of the board, the board president may rule on said motion, and the executive secretary shall issue the written order on behalf of the board. In the absence of the president, the first vice-president or second vice-president respectively may rule on any motion.~~

~~(III) An original and 10 copies of all documents intended to be introduced into evidence at hearings before the full board shall be provided for distribution to the board and the opposing party. Respondent's and applicant's exhibits shall be marked alphabetically. The Department of Revenue's exhibits shall be marked numerically.~~

~~(IV) License applicants shall have the burden of proof to demonstrate to the board that they meet all the qualifications for licensure. If denied a license by the board, applicants~~

~~shall have the burden of proof to demonstrate that the specific reasons given in the notice of denial should not preclude the issuance of a license. Salesperson license applicants shall provide written proof that the employing dealer is aware of the grounds giving rise to the initial license denial, and, that said dealer shall be responsible for the actions of the salesperson in the course of employment in the event that a restricted license is approved.~~

~~(V) Motions shall be served on the board through its executive secretary with proof of service on the opposing party. Except in the most extraordinary circumstances, motions shall be filed not later than 30 calendar days prior to the hearing. A response to any motion shall be filed within 5 business days of the filing of the initial motion. Failure to timely comply may result in the motion being denied. Motions will be considered by the board at its next opportunity. The pendency of motions shall not be cause to continue a scheduled hearing.~~

~~(VI) Continuances will not be granted unless timely filed and with good cause shown. Unreasonable delay in securing legal counsel or failing to timely exercise discovery rights may not constitute "good cause" except in the most extraordinary circumstances.~~

# Notice of Rulemaking Hearing

**Tracking number**

2014-00906

**Department**

700 - Department of Regulatory Agencies

**Agency**

720 - Division of Professions and Occupations - State Plumbing Board

**CCR number**

3 CCR 720-1

**Rule title**

PLUMBING

**Rulemaking Hearing****Date**

10/22/2014

**Time**

09:00 AM

**Location**

1560 Broadway, Suite 110D, Denver CO 80202

**Subjects and issues involved**

Amending Rules 2.3 (Public Copies) and 3.1.1 (Apprentice Registration and Recordkeeping)

**Statutory authority**

12-58-104(1)(d), C.R.S.

**Contact information****Name**

Dennis Larson

**Title**

Enforcement Unit Supervisor

**Telephone**

303-894-7529

**Email**

dennis.larson@state.co.us

**STATE PLUMBING BOARD  
RULES AND REGULATIONS**

**3 CCR 720-1**

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**DEPARTMENT OF REGULATORY AGENCIES**  
**STATE PLUMBING BOARD**  
**PLUMBING**  
**3 CCR 720-1**

**1.0 STATEMENT OF BASIS AND PURPOSE**

- 1.1** The Board adopts the following rules pursuant to the authority granted to the Colorado State Plumbing Board (“Board”) by sections 12-58-104(1)(d) and 12-58-104.5(1) and (5), C.R.S. and hereby repeals all previous rules with the same number.
- 1.2** The following Rules and Regulations of the Colorado State Plumbing Board (“Board”) are necessary for general clarification, efficient management, expeditious procedures, and safeguarding of the general public, in compliance with Title 12, Article 58 of the Colorado Revised Statutes. These Rules and Regulations shall be known, and may be cited, as “the Rules” and/or “these Rules.”
- 1.3** These Rules shall be binding on every person and legal entity authorized to practice, offer to practice, or perform plumbing or plumbing contracting in Colorado. All licensees and registrants under Title 12, Article 58 of the Colorado Revised Statutes are charged with having knowledge of the existence of these rules and shall be deemed to be familiar with their provisions and to understand the rules. In these Rules, the word "licensee" shall mean any person holding a master plumber license, journeyman plumber license, or residential plumber license. In these Rules, the word “registrant” shall mean any person registered as a plumbing apprentice and any person or legal entity registered with the Board as a plumbing contractor.

These Rules are severable. If one rule or portion of a rule is found to be invalid, all other rules or portions of rules that can be enforced without the invalid rules shall be enforced and shall remain valid.

**2.0 STANDARDS**

**2.1 Colorado Plumbing Code**

The Board hereby adopts and incorporates by reference, with certain additions, revisions, and deletions, the following chapters, sections, and appendices of the International Plumbing Code (“IPC”) and International Residential Code (“IRC”).



These Rules, together with the following incorporated provisions, shall be known as the Colorado Plumbing Code. The Colorado Plumbing Code sets forth the minimum standards governing the inspection, installation, alteration, and repair of the plumbing fixtures, appliances, and systems throughout Colorado. The Colorado Plumbing Code does not include any later amendments to or editions of the IPC or IRC provisions listed below.

**2.1.1** Chapter 1, Sections 101.2, 102, 105, 106.1, 106.3, 106.4, 106.5, 106.5.5, 106.6.1, 107, 108.1, 110.3 Chapters 2-12, 14; and Appendices B, C, D, E, F, of the IPC, 2012 edition, promulgated by the International Code Council, 1st printing (April 2012).

**2.1.2** Chapter 1, Section R101, R102; Chapter 2; Chapter 3, Section R306; Chapters 25-32, of the IRC, 2012 edition, promulgated by the International Code Council, 1st printing (April 2012).

## **2.2 Colorado Fuel Gas Code**

The Board hereby adopts and incorporates by reference, with certain additions, revisions, and deletions, the following chapters, sections, and appendices of the International Fuel Gas Code ("IFGC") and the IRC. These Rules, together with the following incorporated provisions, shall be known as the Colorado Fuel Gas Code. The Colorado Fuel Gas Code sets forth the minimum standards governing the inspection, installation, alteration, and repair of fuel gas piping and systems throughout Colorado. The Colorado Fuel Gas Code does not include any later amendments to or editions of the IFGC and IRC provisions listed below.

**2.2.1** Chapter 1 Section 101, 102, 105, 107, Chapters 2-8 Appendices A-C of the IFGC, 2012 edition, promulgated by the International Code Council, 1st printing (January 2012).

**2.2.2** Chapter 1, Section R101, R102; Chapter 2; Chapter 24, Sections G2411-G2422 of the IRC, 2012 edition, promulgated by the International Code Council, 1st printing (April 2012).

## **2.3 Public Copies**

Copies of the provisions of the IPC, IFGC, and IRC, adopted and incorporated into the Colorado Plumbing Code and the Colorado Fuel Gas Code, are available for public inspection during regular business hours at the Board office at the Division of

Professions and Occupations, Department of Regulatory Agencies, 1560 Broadway, Suite 1350, Denver, Colorado, 80202, and at any state publications depository library. For further information regarding how this material can be obtained or examined, contact the Program Director for the Board (“Program Director”) at 1560 Broadway, Suite 1350, Denver, Colorado, 80202, (303) 894-2309. Copies of the IPC, IFGD, and IRC may be obtained from the International Code Council, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001. A list of ICC regional offices is available at <http://www.iccsafe.org/AboutICC/Pages/ContactICC.aspx>.

## **2.4 General Interpretations**

The following shall apply to the Colorado Plumbing Code and Colorado Fuel Gas Code.

**2.4.1 Code Official.** Whenever the Colorado Plumbing Code and the Colorado Fuel Gas Code refer to “the code official,” it shall mean the Board or its designee, if any.

**2.4.2 Reasonable Time.** As used in the Rules, the term “reasonable time” shall mean thirty (30) calendar days.

### **2.4.3 Abbreviations**

**ANSI – American National Standards Institute**

**ASME – American Society of Mechanical Engineers**

**ASSE – American Society of Sanitary Engineers**

**ASTM – American Society for Testing and Materials**

**C.F.R. – Code of Federal Requirements**

**C.R.S. – Colorado Revised Statutes**

**ICC – International Code Council**

**NFPA – National Fire Protection Association**

### **2.4.4 Alternate Materials and Methods Review**

**2.4.4.1 Criteria.** The Board shall consider requests for approval of alternate materials or methods under the procedures and limitations of Section 105 of the Colorado Plumbing Code and Colorado Fuel Gas Code.

#### **2.4.4.2 Procedures**

**A. Petitions for Approval.** Any interested person may petition the Board to amend the Colorado Plumbing Code so as to approve the use of an alternate material or method, pursuant to Section 105 of the IPC. Such petition shall conform to the requirements in B.2. Incomplete petitions will not be processed.

**B. Petition Contents.** Each petition filed under this rule shall comply with the following requirements:

**1. Where to Submit.** Petitions shall be submitted in duplicate to the Program Director.

**2. Petition Document.** Petitions shall begin with a short concise document labeled as the “petition,” and which includes the following information:

(a) Identification of the petitioner and the petitioner's interest in the alternate materials or methods approval. This identification shall designate one person as the Board's contact for the petition, and list telephone, fax, e-mail, and mailing addresses for that person.

(b) A full description of the types of uses for which the petitioner would like approval. This list should be sufficiently detailed to allow the Board to consider specific types of applications or uses for the alternate material and/or method.

(c) A complete identification of the applicable standards from the Referenced Standards identified in the Colorado Plumbing Code or Colorado Fuel Gas Code that the petitioner proposes to be the acceptance criteria for the alternate material or method.

(d) If the petition is for approval of an alternate material, one sample of the material. The sample will be returned to the petitioner after completion of the review process.

(e) Copy of approval language of each code the petitioner cites.

**3. Submission of National Standards.** Each petition shall be accompanied by a set of the applicable standards from the Referenced Standards identified in the Colorado Plumbing Code or Colorado Fuel Gas Code listed by the petitioner in Rule 2.4.3.2.B.2(c). If the listed standard incorporates other standards into its criteria, copies of the incorporated standards shall be submitted as well.

**4. Results of Independent Third Party Compliance Testing.** Each petition shall be supported with complete copies of test reports with protocols issued within the previous eighteen (18) months prior to the date of submission by a laboratory or other testing facility that is recognized as a nationally recognized testing laboratory, pursuant to 29 C.F.R. section 1910.7, or by an ANSI accredited third-party certifier.

**5. Compliance with Section 105.** Each petition shall be supported by detailed written discussion as to why the proposed alternate material or method meets the following requirements from Section 105 of the IPC:

(a) That the proposed design of the proposed alternate material is satisfactory and complies with the intent of the Colorado Plumbing Code or Colorado Fuel Gas Code.

(b) That the proposed material is appropriate for the proposed intended use at least the equivalent of that prescribed in the Colorado Plumbing Code or Colorado Fuel Gas Code with respect to quality, strength, effectiveness, durability and safety. This description requires that the petitioner directly compare the quality, strength, effectiveness, durability and

safety data on the applicable conventional systems with the tested and documented performance characteristics of the proposed alternate material and/or method.

- (c) When an alternate installation method is proposed, the petitioner shall describe how the proposed method of installation conforms to the most recently adopted edition of the Colorado Plumbing Code or Colorado Fuel Gas Code.

#### **2.4.4.3 Reconsideration of Board Action**

Any petitioner whose petition has not been fully granted by the Board may apply for reconsideration of the Board's decision within thirty (30) days of the mailing of the Board's notice of denial, publication of notice of termination, or publication of the Board rule that partially granted the petition. A request for reconsideration shall be in writing and shall explain why reconsideration is warranted. Action on any request for reconsideration is within the sole discretion of the Board.

**2.4.5 Fee Establishment.** Licensing, permit, and reinspection fees shall be established pursuant to section 24-34-105, C.R.S., and shall be categorized appropriately, such as original license, registration, endorsement, renewal, reinstatement fees, permit fees, and reinspection fees.

**2.4.6 Information Only Sections.** Installations detailed in the Colorado Plumbing Code that are typically not installed by plumbers (*i.e.*, shower wall composition from Sections 417.4.1, IPC and P2710.1, IRC; Shower floors from Sections 417.5, IPC and P2709.2, P2709.3, IRC) are not subject to licensing, permitting or inspection but are informational only.

## **2.5 Revisions and Exceptions to the Incorporated Codes**

### **2.5.1 Revisions and Exceptions to the Colorado Plumbing Code**

#### **2.5.1.1 IPC Section 202 Definitions.**

Add new definitions to read:

**Trap drain.** That portion of horizontal piping between the weir of a trap and the point where it intersects with the vent serving that same trap (trap arm).

**2.5.1.2 IPC Section 202 Definitions.**

**Fixture drain.** Delete the definition and replace with:

**Fixture Drain.** That portion of a plumbing drainage system that connects the trap drain to any other drain pipe receiving the discharge from one or more plumbing fixtures.

**2.5.1.3 IPC Section 301.3 Connection to drainage system**

Delete the Exception in its entirety.

**2.5.1.4 IPC Section 308 Interval of support:**

**308.5 Interval of support**

Add new sentence at the end of the section to read:

Hanger support rods shall be sized in accordance with table 308.5.1

Hanger Rod Size.

**2.5.1.5 Add new Table 308.5.1 Hanger Rod Size**

Table 308.5.1 Hanger Rod Size	
Pipe and Tube Size	Rod Size
½" - 4"	3/8"
5" - 8"	½"
10" - 12"	5/8"

**2.5.1.6 IPC Section 312.1 Required tests**

Delete the words "for piping systems other than plastic"

**2.5.1.7 IPC Section 312.3 Drainage and vent air test**

Delete the words "Plastic piping shall not be tested using air."

**2.5.1.8 IPC Section 312.4 Drainage and vent final test**

Delete in its entirety.

**2.5.1.9 IPC Section 312.5 Water supply system test**

Delete the words “for piping systems other than plastic”

**2.5.1.10 IPC Section 312.9 Shower liner test**

Delete in its entirety.

**2.5.1.11 IPC Section 405.3.2 Public Lavatories**

Add a new exception reading:

**Exception:** Lavatories located outside a toilet room located within a classroom serving students from that classroom only. These toilet rooms and lavatories shall not count toward the total fixture count required by Table 403.1.

**2.5.1.12 IPC Section 417.7 Shower head location**

Add new section to read:

**417.7 Shower head location.** Showerheads shall be located on the sidewall of shower compartments or be arranged so the shower head does not discharge directly at the entrance to the compartment and the bather can adjust the valve prior to stepping into the shower spray.

**2.5.1.13 IPC Section 417.8 Shower valve location**

Add new section to read:

**417.8 Shower valve location.** A shower or tub/shower control valve shall be installed only where the spout and/or shower head discharges into an approved tub or shower compartment.

**Exception:** Emergency Showers.

**2.5.1.14 IPC Section 504.6.1 Collection of Relief Valve Discharge**

Add new section 504.6.1 to read:

**504.6.1. Collection of Relief Valve Discharge.** A means shall be provided to capture the discharge from a relief valve and convey it to the sanitary drainage system or exterior of the structure either by gravity or a pumped discharge.

**Exceptions:** 1. Replacements for existing water heaters.

2. Where a water sensing device wired to a normally closed solenoid valve installed in the water service piping placed within the water heater drain pan.

is

#### 2.5.1.15 IPC Section 504.6.1.1 Pumped discharge of relief valve collection

Add new Section 504.6.1 to read:

**504.6.1.1 Pumped discharge of relief valve collection.** Pumps used to discharge the clear water collection of relief valves shall have an operating temperature equal to or exceeding that of the relief valve discharge temperature and shall have a gpm rating equal to or greater than the discharge of the relief valve.

#### 2.5.1.16 IPC Section 608.17 Protection of individual water supplies

Delete in its entirety.

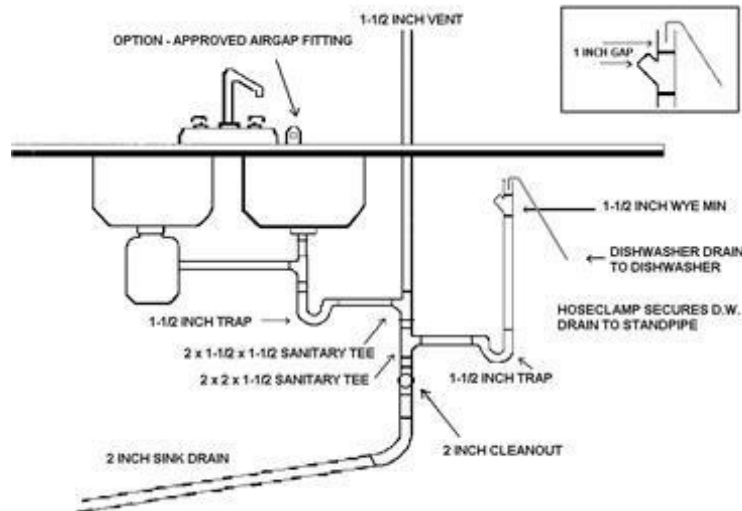
#### 2.5.1.17 IPC Section 802.2 Installation

Delete the last sentence.

#### 2.5.1.18 IPC Section 802.1.6 Domestic dishwashing machines.

Add an exception to read:

**Exception:** Domestic dishwashing machines may be connected to a separately trapped stand pipe provide with an air break as shown in the illustration below.





#### **2.5.1.19 IPC Section 903.1 Roof extensions**

Insert 6 inches into the section so that it reads: “All open vent pipes that extend through a roof shall be terminated at least 6 inches above the roof, except that where a roof is to be used for any purpose other than weather protection, the vent shall be extended at least 7 feet (2134 mm) above the roof.”

#### **2.5.1.20 IPC Section 903.2 Frost Closure**

Delete in its entirety.

#### **2.5.1.21 IPC Section 1002.1 Fixture traps.**

Add new exception 4 to read:

**Exception:** 4. Trench and floor drains connected to a sand oil interceptor need not be individually trapped provided the drain piping from the trench or floor drains is turned down after entering the interceptor so the discharge point is a minimum of 4 inches below the standing water level of the interceptor.

#### **2.5.1.22 IPC Section 1002.3 Trap Seals**

Add new exception to read:

**Exception:** A trap seal primer valve is not required where the trap seal is protected by a barrier type floor drain trap seal protection device conforming to ASSE 1072.

#### **2.5.1.23 IPC Section 1003.1 Where required**

Add the following Exception

**Exception:** Where special regulations exist by the local waste water and/or sanitation district into which the grease trap or interceptor effluent is transported and/or treated. These regulations may supersede this requirement.

#### **2.5.1.24 IPC Section 1101.3 Prohibited drainage**

Add a new sentence to the end of the section reading: Storm water from roof drains shall not discharge over public walkways.

**Exception:** Secondary drains.

#### **2.5.1.25 IPC Chapter 14 Reference Standards**

Add ASSE Standard 1072—2007 to the list of ASSE standards as follows:  
1072-2007 Performance Requirements for Barrier Type Floor Drain  
Trap Seal Protection Devices.....1024.

### **2.5.2 Revisions and Exceptions to the International Residential Code Part VII incorporated as the Colorado Plumbing Code**

#### **2.5.2.1 IRC Section R202 Definitions**

Add new definition to read as follows:

**Multipurpose Residential Fire Sprinkler System.** A Multipurpose Residential Fire Sprinkler System includes the domestic water distribution piping and the fire sprinkler piping which shall be a part of and connect to the cold water distribution piping at any point.

#### **2.5.2.2 IRC Section R202 Definitions**

Add new definition to read as follows:

**Trap drain.** That portion of horizontal piping between the weir of a trap and the point where it intersects with its vent.

#### **2.5.2.3 IRC Section R202 Definitions**

**Fixture drain.** Delete the definition and replace with:

That portion of a plumbing drainage system that connects the trap drain to any other drain pipe receiving the discharge from one or more plumbing fixtures.

#### **2.5.2.4 IRC Section P2503.5.1 Rough Plumbing**

Delete the words “for piping systems other than plastic”

#### **2.5.2.5 IRC Section P2503.6 Shower liner test**

Delete in its entirety.

#### **2.5.2.6 IRC Section P2503.7 Water supply system testing**

Delete the words “for piping systems other than plastic”

### 2.5.2.7 IRC Section P2503.8.2 Testing

Delete in its entirety.

### 2.5.2.8 IRC Section P2601.2 Connection to drainage system

Delete the **Exception** in its entirety.

### 2.5.2.9 IRC Section P2708.5 Shower head location

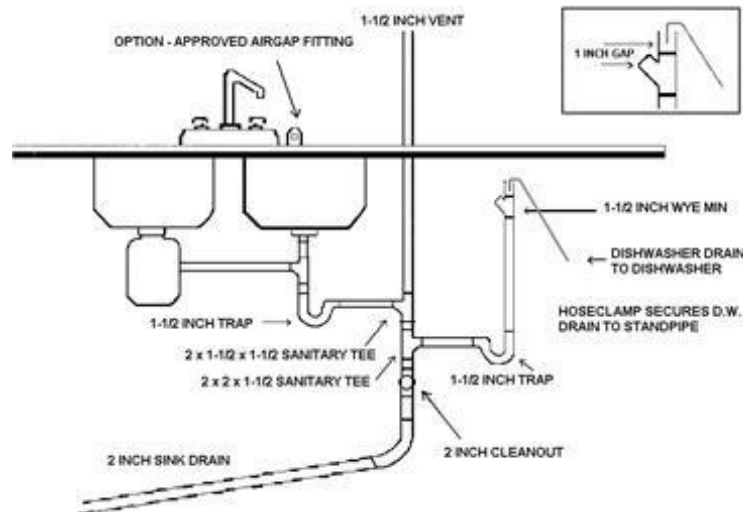
Add new section P2708.5 to read:

**P2708.5 Shower head location.** Showerheads shall be so located on the sidewall of shower compartments or be arranged so the shower head does not discharge directly at the entrance to the compartment and the bather can adjust the valve prior to stepping into the shower spray.

#### 2.5.2.10 IRC Section P2717.4 Dishwasher drain.

Add new section to read:

**IRC Section P2717.4 Dishwasher drain.** Dishwashers may drain into a standpipe complying with Section P2706.2 as shown in the illustration below. The standpipe shall be provided with an air break.



#### 2.5.2.11 IRC Section P2803.6.2 Collection of Relief Valve Discharge

Add new section P2803.6.2 to read:

**P2803.6.2 Collection of Relief Valve Discharge.** A means shall be provided to capture the discharge from a relief valve and convey it to the

sanitary drainage system or exterior of the structure either by gravity or a pumped discharge.

**Exceptions:** 1. Replacements for existing water heaters.

2. Where a water sensing device wired to a normally closed solenoid valve installed in the water service piping placed within the water heater drain pan.

is

#### **2.5.2.12 IRC Section P2803.6.2.1 Pumped discharge of relief valve collection**

Add new Section P2803.6.2.1 to read:

**P2803.6.2.1 Pumped discharge of relief valve collection.** Pumps used to discharge the clear water collection of relief valves shall have an operating temperature equal to or exceeding that of the relief valve discharge temperature and shall have a gpm rating equal to or greater than the discharge of the relief valve.

#### **2.5.2.13 IRC Section P2904 General**

Delete in its entirety and replace with:

**P2904.1 General.** Where installed, residential fire sprinkler systems, or portions thereof, shall be in accordance with NFPA 13D or Section P2904, which shall be considered equivalent to NFPA 13D. Section P2904 shall apply to multipurpose wet-pipe sprinkler systems that do not include the use of antifreeze. A multipurpose fire sprinkler system shall supply domestic water to both fire sprinklers and plumbing fixtures. A backflow preventer shall not be required to separate the sprinkler system from the water distribution system.

#### **2.5.2.14 IRC Section P3009 Gray water recycling systems**

Delete in its entirety.

#### **2.5.2.15 IRC Section P3103.2 Frost closure**

Delete in its entirety.

#### **2.5.2.16 IRC Section P3201.2 Trap seals and trap seal protection**

Add a new exception to read:

**Exception:** A trap seal primer valve is not required where the trap seal is protected by a barrier type floor drain trap seal protection device conforming to ASSE 1072.

## **2.5.3 Revisions and exceptions to the International Fuel Gas Code incorporated as the Colorado Fuel Gas Code**

### **2.5.3.1 IFGC Section 101.1 Title**

Delete in its entirety.

### **2.5.3.2 IFGC Section 101.2.2 Piping Systems**

Delete the words “and maintenance” from the end of the last sentences.

### **2.5.3.3 IFGC Section 303. Prohibited locations**

Delete the words “toilet rooms” from the section.

### **2.5.3.4 IFGC Section 310.1.1 CSST**

Add a new exception to read:

**Exception:** Conductive Jacketed Corrugated Stainless Steel Tubing (CSST) with arc resistant jacketing complying with Listing LC1024 from the ICC Evaluation Service shall be installed per the manufacturer’s installation instructions and the listing’s requirements.

### **2.5.3.5 IFGC Section 403.10.5 Welded joints**

Add new section 403.10.5 to read:

**403.10.5 Welded Joints.** Welded joints shall be performed by a person holding a valid certificate of competency based on the requirements of the ANSI/ASME Boiler and Pressure Vessel Code, Section IX, Brazing and Welding Qualifications. Welded joints shall comply with ASTM 139.

### **2.5.3.6 IFGC Section 406.1 Inspection, Testing, and Purging**

Add a new sentence to the end of the section reading:

Inspection and pressure testing shall apply to temporary installations connected to a primary fuel gas source for the purpose of supplying temporary heat.

### **2.5.3.7 IFGC Section 408.4 Sediment trap**

Delete in its entirety

### **2.5.3.8 IFGC Section 409.5.3 Located at manifold**

Delete in its entirety.

#### **2.5.3.9 IFGC 409.6 Shutoff valve for laboratories**

Add new subsection 409.6.1 to read:

**409.6.1 Electric Solenoid Valve.** A remotely located electric solenoid emergency shutoff valve may be used for compliance to Section 409.6, when all the following requirements are met.

1. The emergency control shutoff “panic button” shall be readily accessible, located within the laboratory space served, adjacent to the egress door from the space and shall be identified by approved signage stating “Gas Shutoff”.
2. The gas solenoid valve shall be a “normally closed” type valve with a manual reset.

### **2.5.4 Revisions and exceptions to the International Residential Code Chapter 24 Fuel Gas incorporated as the Colorado Fuel Gas Code**

#### **2.5.4.1 IFGC Section G2414.10.5 Welded joints**

Add new section G2414.10.5 Welded joints to read: **Welded joints.**

Welded joints shall be performed by a person holding a valid certificate of competency based on the requirements of the ANSI/ASME Boiler and Pressure Vessel Code, Section IX, Brazing and Welding Qualifications. Welded joints shall comply with ASTM 139.

#### **2.5.4.2 IRC Section G2411.1 Gas Pipe Bonding**

Add a new exception to read:

**Exception:** Conductive Jacketed Corrugated Stainless Steel Tubing (CSST) with arc resistant jacketing complying with Listing LC1024 from the ICC Evaluation Service shall be installed per the manufacturer’s installation instructions and the listing’s requirements.

#### **2.5.4.3 IRC Section G2419.4 Sediment Trap**

Delete in its entirety.

#### **2.5.4.4 IRC Section G2420.5.3 (Shutoffs) Located at manifolds**

Delete in its entirety

### 3.0 APPRENTICE REGISTRATION AND RECORDKEEPING

#### 3.1 Registration

**3.1.1** ~~Apprentice registrations that are submitted more than thirty (30) days after the date of hire require the following:~~The Board may require the employer of a plumbing apprentice to provide information verifying the apprentice's record of employment and practical experience, including but not limited to a written attestation from the responsible master plumber verifying that the apprentice has been performing plumbing work during any period the apprentice was not registered. Employers of apprentices shall cooperate with any request from the Board pursuant to this rule and furnish such information or assistance as the Board may request.

**3.1.1.1** ~~Completed apprentice registration signed by the master plumber for, or any signatory authority of, the plumbing contractor, and the apprentice;~~

**3.1.1.2** ~~Registration fee; and,~~

**3.1.1.3** ~~A written attestation from the responsible master verifying that the apprentice has been performing plumbing work during the unregistered period.~~

**3.1.2** An individual that holds an active residential plumber's license and is working on a commercial job site must be registered as an apprentice.

**3.1.3** An employer who fails to timely register an apprentice as required by section 12-58-105(2)(a), C.R.S. and this rule shall be subject to disciplinary action pursuant to section 12-58-110(1), C.R.S.~~The Board may take disciplinary action upon a finding of a violation of section 12-58-117, C.R.S., requiring the timely registration of apprentices.~~

**3.2 Recordkeeping.** Plumbing Contractors shall maintain employment records or work reports for their apprentices in order to provide experience verification. Such records or reports should accurately document the number of hours and months the apprentice performed plumbing work and should specifically reflect exact dates of employment.

### 4.0 APPLICATIONS AND LICENSING

#### **4.1 Applications for License Examinations**

**4.1.1 Submission.** All applications for license examinations shall be submitted to the Division of Professions and Occupations.

**4.1.2 Incomplete Application.** An application for a license by examination or endorsement submitted without all required fees and documentation will be considered incomplete. Incomplete applications will be retained for one (1) year from the date originally received, after which applicants shall begin the process again including payment of the application fee.

**4.1.3 Documentation.** Any applicant for the residential, journeyman, or master plumber's license exam shall furnish evidence as to his or her training and experience to qualify for the examination by:

**4.1.3.1** A record of employment and/or as an apprentice doing plumbing work, exact dates so employed, and, at time of application, submission of original documented written evidence, verified by the master license holder or registered plumbing contractor.

**4.1.3.2** If training and experience were obtained outside the State of Colorado, the applicant shall provide the Board with documented, written evidence verified by the employer of actual work performed.

**4.1.3.3** If training and experiences were obtained all or in part from an accredited high school vocational technical training course, community college, or trade school program, a transcript from the accredited high school vocational technical training course, community college or trade school verifying completion of the program shall be submitted with the application. The program length shall be a minimum of two (2) years. Such education may replace actual field experience under a licensed master as follows: one hour of classroom training equals one hour of on the job training up to a maximum of one (1) year.

**4.1.3.4** If training and experiences were obtained all or in part from military training in plumbing work, detail and submit such for evaluation with the application. Such experience may replace actual field experience under a



licensed master as follows: one month for every six (6) months' training or experience up to a maximum of one (1) year.

**4.1.3.5** The hours of practical experience required to qualify for examinations are:

A. Residential Plumber	3,400
B. Journeyman Plumber	6,800
C. Master Plumber	8,500

**4.1.4 Expiration.** An approved applicant for licensure by examination who does not take the examination within one (1) year from the original approval date may be required to submit an updated application.

## **4.2 Licenses.**

**4.2.1 Issuance.** Residential, journeymen or master plumbing licenses will be issued upon successful passing of the respective examination.

**4.2.1.1 By endorsement.** Licensees from another state may be eligible for licensure by endorsement providing that the applicant meets the requirements of section 12-58-111, C.R.S. and all of the following conditions:

- A. Completion of a state or federally approved or registered apprenticeship program, or completion of the required years and type of experience for the comparable license.
- B. Successful completion of a comparable state plumbing examination based on the current or previous edition of the plumbing code adopted by the Board.
- C. Currently holds an active license by the endorsing state.

## **4.3 Disapproval**

**4.3.1 Reconsideration.** An applicant requesting reconsideration of a Board action concerning a disapproval of an application or license by endorsement or requesting a personal interview before the Board, shall submit the request in writing, accompanied by additional information or documentation. This request

shall be submitted within forty-five (45) days of the date on which the Board made the decision. The Board may not consider requests filed thereafter.

#### **4.4 Temporary Work Permits**

**4.4.1 Issuance.** Pursuant to section 12-58-112, C.R.S., a temporary work permit may be issued at the time of approval for an examination. The temporary permit will be valid for a period of no more than thirty (30) days after the date of approval or as otherwise limited in section 12-58-112, C.R.S.

**4.4.2 Not allowed.** A temporary work permit shall not be accepted to meet the requirements for a new contractor registration.

**4.4.2.1** A temporary master plumber work permit may be issued to a qualified applicant of an existing plumbing contractor pursuant to section 12-58-112(4), C.R.S.

#### **4.5 Renewal.**

**4.5.1** A licensee or registrant shall have a sixty-day grace period after the expiration of his or her license or registration to renew such license or registration without having to submit a reinstatement application. During this grace period a delinquency fee will be charged for late renewals.

**4.5.2** A licensee or registrant who does not renew his or her license or registration shall be ineligible to practice until such license or registration is reinstated. If the licensee or registrant practices with an expired license or registration, the Board may impose disciplinary actions.

**4.5.3** An expired license or registration may be reinstated by submitting a reinstatement application and paying the current reinstatement fee.

**4.5.4** If the license or registration has expired for two (2) years or more, the licensee or registrant shall demonstrate competency to practice by satisfactorily passing the State plumbing examination.

**4.5.5** Registered Plumbing Contractors with expired permits shall not have their contractor registrations renewed until such time as all expired permits are cleared or as otherwise allowed by the Board.

#### **4.6 Reinstatement**

**4.6.1** Any individual who has become licensed as a journeyman and master plumber in the State of Colorado by examination and keeps his or her master plumber license active in Colorado may reinstate the expired journeyman license without re-examination by submitting a reinstatement application and paying the current reinstatement fee.

#### **4.7 Pumping Equipment License**

**License required.** Any individual licensed as a residential plumber, journeyman plumber, or master plumber under Title 12, Article 58 of the Colorado Revised Statutes who intends to install, alter, or repair “pumping equipment”, as defined by section 37-91-102(13), C.R.S. shall first apply for and obtain licensure with the Water Well Construction and Pump Installation Contractors Board prior to commencing any such activity. Failure to comply with the licensure requirements set forth herein shall be, if proven, a violation of section 12-58-110(1)(b), C.R.S.

*(“Pumping equipment” means any pump or related equipment used or intended for use in withdrawing or obtaining groundwater, including, but not limited to, well seals, pitless adapters, and other safeguards to protect the groundwater from contamination and any waterlines up to and including the pressure tank and any coupling appurtenant thereto.)*

### **5.0 EXAMINATIONS**

**5.1 Identification.** The applicant shall present positive photo identification in order to be admitted to the examination area.

**5.2 Proprietary Information.** The content and answers to examinations for licensure or renewal administered by the Board are proprietary property. Licensees and registrants shall not disclose, or offer to disclose any portion of the examinations to others. Licensees and registrants may be subject to disciplinary action by the Board should they disclose, or offer to disclose, sell or otherwise distribute the content and/or answers for any examinations administered by the Board.

**5.3 Results** Examination results will be provided in writing to each examinee. Results will not be given in any other manner. Consistent with widely accepted testing practices, applicants who pass the examination will be given their results in a pass/fail format.

**5.4 Review.** Examinations shall not be subject to review by applicants.

## **6.0 LICENSEE AND REGISTRANT RESPONSIBILITIES**

- 6.1 Requirement to Carry Documentation.** Any licensed or registered individual working as a plumber or apprentice shall be required to carry on his or her person the appropriate license, temporary work permit, or registration.
- 6.2 Residential Plumber on Commercial Job.** Residential Plumbers must maintain an apprentice registration when working on commercial jobs and be supervised accordingly.
- 6.3 Plumbing Contractor's Loss of Responsible Master.** A plumbing contractor that, for any reason, loses the services of the responsible master plumber will be allowed twenty (20) days in which to hire another master plumber. If another master plumber has not been hired during that period, the plumbing contractor registration will be placed into a "Need Master Hire-Cannot Practice" status until such time as a master has been hired, and the appropriate fee paid.
- 6.4 Termination or Separation of Apprentice.** Plumbing contractors shall notify the Board within thirty (30) days after the termination or separation of a plumbing apprentice.
- 6.5 Apprentice Information File.** It shall be the responsibility of the apprentice to file and keep current contact information with the Board. Notification by any manner approved by the Board is acceptable but the online registration system is preferred.
- 6.6 Notice of Change of Address**
- 6.6.1** A licensee or registrant shall inform the Board in a clear, explicit, and unambiguous written statement of any name, address, telephone, or email change within thirty (30) days of the change. The Board will not change the licensee or registrant information without explicit written notification from the licensee or registrant. Notification by any manner approved by the Board is acceptable.
- 6.6.1.1** The Division of Professions and Occupations maintains one (1) contact address for each licensee or registrant, regardless of the number of licenses or registrations the licensee or registrant may hold.
- 6.6.1.2** All communications will be sent to the address on record for each licensee or registrant. Address change requests to route specific communications (*i.e.*, confidential communications) to a separate address are not accepted.

**6.6.2** The Board requires one (1) of the following forms of documentation to change the name or correct the social security number of a licensee or registrant:

- A.** Marriage license;
- B.** Divorce decree;
- C.** Court order; or
- D.** 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.

## **7.0 PERMITS AND INSPECTIONS**

### **7.1 Permits**

**7.1.1 Permit Required.** A permit and inspections shall be required for all plumbing or fuel gas piping work as described in the Title 12, Article 58, C.R.S. and/or the Colorado Plumbing Code or Colorado Fuel Gas Code, either through the Board or the Local Authority Having Jurisdiction.

**7.1.2 Issuance.** Plumbing or fuel gas piping permits shall be issued in the name of the qualified applicant or registered contractor performing the work prior to the commencement of any work being undertaken.

**7.1.3 Fraudulent Information.** Any permit issued as a result of fraudulent or incorrect information supplied on the application shall be cancelled.

**7.1.4 Double Fee.** Any work commencing prior to the purchase of a permit is subject to twice the prescribed permit fee.

#### **7.1.5 Stop Work Order**

**7.1.5.1 Notice to owner.** Upon notice from the *plumbing inspector* that work on any building or structure is being installed contrary to the provisions of this code or in an unsafe and dangerous manner, such work shall be immediately stopped. The stop work order shall be in writing and shall be

given to the owner of the property involved, or to the owner's agent or to the person doing the work, or posted at the job site and shall state the conditions under which work will be permitted to resume.

**7.1.5.2 Unlawful continuance.** Any person who shall continue any work in or about the structure after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be subject to penalties as prescribed by this article.

**7.1.6 Moved Buildings.** Moved buildings with a pre-existing plumbing and or fuel gas system.

**7.1.6.1** New potable water supply and sanitary system may be connected upon written verification to the Board from a plumbing contractor that the existing system presents no hazard to life, health, or property. A permit and inspection are required to witness proper connections are made.

**7.1.6.2** Prior to connecting an existing gas piping system to a new gas supply, a permit must be obtained, a pressure test performed, and an inspection must be approved.

**7.1.6.3** Any new plumbing or gas piping system installed in a moved building shall require a permit and inspections according to the codes and amendments enforced at the time the permit is obtained.

**7.1.7 Temporary Buildings.** Temporary buildings used by the public shall incorporate sanitary facilities and potable water in accordance with the Colorado Plumbing Code. Permits and inspections are required.

## **7.2 Inspections**

**7.2.1 How Conducted.** Inspections shall be conducted according to Section 107 (IPC, IFGC) and Section P2503 (IRC) as adopted into the Colorado Plumbing Code or Colorado Fuel Gas Code.

**7.2.2 Requirements for inspections.** Persons requesting inspections shall provide:

- A.** Access to the inspection area during the reasonable working hours (*i.e.*, Monday through Friday, 8:00 a.m. to 5:00 p.m.).

- B.** Ladders for access to inspection areas such as roofs and/or deep crawl spaces.

- C.** An approved set of design plans for commercial and school jobs shall be located at the job site.

**7.2.3 Inspection Categories.** Prior to requesting an inspection, the installation to be inspected shall be complete and under test by the following categories:

**7.2.3.1 Plumbing**

- A. Underground plumbing** (all drain, waste, vent, and water piping below grade).

- B. Rough in plumbing** (all drain, waste, vent, and water piping, valves above grade).

- C. Final Plumbing** (all plumbing fixtures installed with hot and cold running water).

**7.2.3.2 Gas piping**

- A. Rough gas piping** (all piping shall be installed and under the prescribed air test).

- B. Underground installation** (any underground piping after the point of delivery by the purveyor).

- C. Final gas piping inspection** (all gas appliance shutoff outlets shall be installed, capped or plugged, unless connected to a properly vented gas burning appliance).

**7.2.4 Incomplete Installations.** Installations that are incomplete when the inspector arrives may be subject to a re-inspection fee.

**Exception:** Large projects may have partial inspections in designated areas as needed to keep projects within a time schedule. All portions of the installation must be completed within the designated area of inspection.

**7.2.5 Reinspection Fees.** A reinspection fee may be assessed at the discretion of the inspector for reasons including, but not limited to, the following:

- 7.2.5.1** The job is not ready for an inspection and an extra trip is required for the inspector (a job with multiple code violations may be considered “not ready” by the inspector).
- 7.2.5.2** Corrections have not been made to all code violations cited from previous inspection.
- 7.2.5.3** No access to the job site for reasons including but not limited to; locked gate or door, snow not plowed, no escort into an occupied structure, etc. (inspectors may not enter an occupied residence without an escort at least 18 years or older).
- 7.2.5.4** Hazardous construction site as determined by the inspector or OSHA guidelines (may include loose dogs, etc.)
- 7.2.5.5** Address not posted so as to be visible from the street or road.
- 7.2.5.6** Improper directions to jobsite given on permit or inspection requests.
- 7.2.6 Reinspection.** A reinspection shall not be performed until the reinspection fee has been paid.
- 7.2.7 Requests.** An inspection request will only be accepted from the permit owner or their agent.
- 7.2.8 Provide services.** A utility purveyor shall not provide service to any structure required to have gas inspections required by Article 58, Title 12, section 12.58.114.5(1) without proof of final approval as provided in Section 7.2.3.29(c).

## **8.0 ENFORCEMENT**

**8.1 Knowledge of Violation.** Licensees and registrants having knowledge of, or involvement in, any alleged violation of Title 12, Article 58, C.R.S. or Board rules, shall cooperate with any investigation initiated by the Board and furnish such information or assistance as may be requested.

**8.2 Reporting Felony Convictions.**



**8.2.1** A licensee or registrant, as defined in section 12-58-102(2), (3), (6), (7), and (9), C.R.S., including but not limited to registered plumbing apprentices, registered plumbing contractors, or licensed plumbers (residential, journeyman, and master) shall inform the Board, in a manner set forth in this Rule, within forty-five (45) days of the conviction of the licensee or registrant of a felony under the laws of any state or of the United States.

**8.2.2** The conviction of the licensee or registrant of a felony under the laws of any state or of the United States is grounds for discipline pursuant to section 12-58-110(1)(f), C.R.S.

**8.2.3** For purposes of this rule, a “conviction” includes:

- A.** A guilty verdict;
- B.** A plea of guilty accepted by the court; or
- C.** A plea of nolo contendere (no contest) accepted by the court.

**8.2.4** The notice to the Board shall include the following information:

- A.** The court;
- B.** The jurisdiction;
- C.** The case name;
- D.** The case number; and
- E.** A description of the matter or a copy of the indictment or charges.

**8.2.5** The licensee or registrant shall inform the Board of the following information within forty-five (45) days of each such occurrence:

**8.2.5.1** The imposition of sentence for a felony conviction; and

**8.2.5.2** The completion of all terms of a sentence for a felony conviction.

**8.2.6** The licensee or registrant notifying the Board may submit a written statement with any notice under this rule to be included in the registrant or licensee records.

**8.2.7** This rule shall apply to any conviction or plea as described in Rule 8.2.3.

### **8.3 Citations**

**8.3.1 Forms.** The citation form will be completed by the state plumbing inspector or by the Board. Citations shall be served by certified mail, in person by a State plumbing inspector, or by waiver of personal service. Personal service provided by the plumbing inspector shall be verified by affidavit. The Program Director will approve the completed and served citation. The Board maintains the discretion to dismiss the citation at any time.

**8.3.2 Response.** The citation form shall direct the recipient to respond in one of the following ways within ten (10) working days after service of the citation:

- A. Pay the fine;
- B. Submit a written request to negotiate a stipulated settlement agreement with the Program Director; or
- C. Submit a written request for a formal administrative hearing.

**8.3.3 Fines.** If one of the following actions is not taken by the citation recipient within ten (10) working days following service of the citation, recipient will be deemed to have failed to comply with the citation:

- A. Full payment of the fine;
- B. Written request for negotiation of a stipulated settlement agreement; or
- C. Written request for a formal administrative hearing. Reasonable attorney fees and costs may be assessed by the Board when taking formal action to collect fines. A citation offense that is more than four (4) years old will not be considered by the Board when determining disciplinary action.

**8.3.4 Negotiations.** All requests and explanation for negotiation of a stipulated settlement agreement shall be submitted to the Program Director or designee in writing and may include information in mitigation of the violation. Inspectors shall not negotiate settlements or accept payments of fines resulting from citations. The date the request for negotiation of a stipulated settlement agreement is received by the Program Director constitutes the submittal date. After reviewing the requested settlement information, the Program Director has the option to authorize any of the following actions:

- A. Reduce the fine;
- B. Arrange a payment schedule for the fine;
- C. Permit a personal appearance before the Board;
- D. Refer the matter to the Board.

**8.3.4.2 Termination of negotiations.** Negotiations may terminate for reasons including but not limited to:

- A. The recipient admits to committing the violation;
- B. The recipient does not conduct settlement negotiations timely and in writing;
- C. The recipient does not present reasonable mitigating or extenuating information in writing;
- D. The Program Director determines the settlement negotiations are not being conducted in good faith or are being conducted for the purpose of delay;
- E. It appears unlikely the parties will reach a negotiated resolution;
- F. The recipient has prior violations that need to be brought to the Board's attention prior to attempting settlement negotiations.

**8.3.5 Stipulation Agreement.** A stipulated settlement agreement shall be signed and dated by the Program Director and the citation recipient. The stipulated settlement agreement shall be approved by the Board to become final and shall

contain an admission of the violation(s), unless good cause exists, in the Program Director's discretion, to omit one or more admissions. A stipulated settlement agreement shall be considered a violation for the purpose of determining the fine amount of subsequent violations.

**8.3.6 Formal Hearing.** A written request from the citation recipient to proceed to a formal hearing may be submitted at any time during settlement negotiations. If the negotiations are subsequently deemed futile, the citation recipient shall be notified that payment of the fine or request for a formal administrative hearing shall be submitted within ten calendar days. Written settlement information may be used against the licensee, registrant, or applicant respondent at the hearing when unsuccessful settlement negotiations proceed to a formal administrative hearing.

**8.3.7 Attorney General Assistance.** The Board or Program Director may request that the Attorney General assist with settlement negotiations when the citation recipient retains an attorney for assistance during the stipulated settlement negotiations.

**8.3.8 Hearings.** Hearings shall be conducted by an administrative law judge at the Office of Administrative Courts. The citation recipient may be represented at the hearing by counsel of his or her choosing. Hearings shall be conducted in accordance with the Administrative Procedure Act, Title 24, Article 4, C.R.S.

**8.3.8.1 Board action.** At the formal administrative hearing, the Board may pursue the maximum fine allowed by statute. At the formal administrative hearing, the Board may also pursue any other disciplinary sanctions such as revocation, suspension, or probation.

**8.4** The following is the current fine schedule adopted by the Board pursuant to section 12-58-116.5(2), C.R.S.

Violation	Statutory/Rule Provision	1 <sup>st</sup>	2 <sup>nd</sup>	3 <sup>rd</sup>
Engaging in the business, trade, or calling of a residential plumber without a license	12-58-105(1) 12-58-110(1)(a) 12-58-110(1)(o)	\$150	\$375	Up to \$2,000 per day
Engaging in the business, trade or calling of a journeyman plumber without a license	12-58-105(1) 12-58-110(1)(a) 12-58-110(1)(o)	\$225	\$600	Up to \$2,000 per day

Engaging in the business, trade or calling of a master plumber without a license	12-58-105(1) 12-58-110(1)(a) 12-58-110(1)(o)	\$300	\$600	Up to \$2,000 per day
Failure of a plumbing contractor to register an apprentice	12-58-105(2)(b) 12-58-110(1)(a)	\$225	\$600	Up to \$2,000 per day
Failure of an apprentice to work under the supervision of a licensed plumber	12-58-117(1) 12-58-110(1)(a)	\$50	\$200	Up to \$2,000 per day
Employment of unlicensed personnel to perform plumbing work	12-58-110(1)(k) Rule 6.7	\$300	\$600	Up to \$2,000 per day
Operating as a plumbing contractor without obtaining registration from the Board	12-58-105(3) 12-58-110(1)(a)	\$750	\$1,500	Up to \$2,000 per day
Failure of a licensee to supervise a plumbing apprentice	12-58-110 (1)(i) 12-58-117 Rule 8.0	\$375	\$600	Up to \$2,000 per day
Supervision by a residential, journeyman, or master plumber of more than three apprentice plumbers at the same jobsite	12-58-117(1) 12-58-110(1)(a)	\$375	\$600	Up to \$2,000 per day
Failure of a licensed or registered individual working as a plumber to carry on his or her person the appropriate license, temporary work permit, or registration	12-58-110(1)(b) Rule 7.1	\$150	\$375	Up to \$2,000 per day
Failure to obtain a permit and/or failure to obtain an inspection	12-58-114.5(1) 12-58-110(1)(a)	\$375	\$900	Up to \$2,000 per day
Failure to remove a cause for disapproval of any plumbing installation within a reasonable time	12-58-110(1)(c)	\$450	\$900	Up to \$2,000 per day
Advertising by a licensee or registrant which is false or misleading	12-58-110(1)(g)	\$375	\$750	Up to \$2,000 per day
Deception, misrepresentation or fraud in obtaining or attempting to obtain a license	12-58-110(1)(h)	\$1,000	\$2,000	Up to \$2,000 per day
Violating other state law in connection with a construction project ( <i>i.e.</i> , construction, safety, labor, health, worker's compensation insurance, or tax law)	12-58-105(3) 12-58-110(1)(q)	\$375	\$750	Up to \$2,000 per day

Other violations of Article 58 of Title 12, C.R.S. or any Board rule	12-58-110(1)	Up to \$1,000	Up to \$2,000	Up to \$2,000 per day
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- 8.5 Compliance.** Payment of a fine assessed from a citation does not relieve the receiver of the citation from correcting the situation, installation, statute or code violation noted in the citation.

## 9.0 DECLARATORY ORDERS

- 9.1 Board Petition.** 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.
- 9.2 Board Ruling.** The Board will determine, at its discretion and without notice to the 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.
- 9.3 Determination to Rule.** In determining whether to rule upon a petition filed pursuant to this rule, the Board will consider the following matters, among others:
- 9.3.1** Whether a ruling on the petition will terminate a controversy or remove uncertainties as to the applicability to petitioner of any statutory provision or rule or order of the Board.
  - 9.3.2** Whether the petition involves any subject, question or issue which is the subject of a formal or informal matter or investigation currently pending before the Board or a court involving one or more of the petitioners.
  - 9.3.3** Whether the petition involves any subject, question or issue which is the subject of a formal or informal matter of investigation currently pending before the Board or a court but not involving any petitioner.
  - 9.3.4** Whether the petition seeks a ruling on a moot or hypothetical question or will result in an advisory ruling or opinion.
  - 9.3.5** 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.

**9.4 Petition Requirements.** Any petition filed pursuant to this rule shall set forth the following:

- A.** The name, e-mail address, and physical address of the petitioner and whether the petitioner is licensed pursuant to the organic act;
- B.** The statute, rule or order to which the petition relates;
- C.** 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.

**9.5 Procedure.** If the Board determines that it will rule on the petition, the following procedures shall apply:

**9.5.1** The Board may rule upon the petition based solely upon the facts presented in the petition. In such a case:

- 9.5.1.1** Any ruling of the Board will apply only to the extent of the facts presented in the petition and any amendment to the petition.
- 9.5.1.2** The Board may order the petitioner to file a written brief, memorandum or statement of position.
- 9.5.1.3** The Board may set the petition, upon due notice to petitioner, for a non-evidentiary hearing.
- 9.5.1.4** The Board may dispose of the petition on the sole basis of the matters set forth in the petition.
- 9.5.1.5** 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.

**9.5.1.6** The Board may take administrative notice of facts, pursuant to the Administrative Procedure Act, section 24-4-105(8), C.R.S., and may utilize its experience, technical competence and specialized knowledge in the disposition. If the Board rules upon the petition without a hearing, it shall promptly notify the petitioner of its decision.

**9.5.2** The Board may, at its discretion, set the petition for hearing upon due notice to petitioner, for the purpose of obtaining additional facts or information or to determine the truth of any facts set forth in the petition or to hear oral argument on the petition. The 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. 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.

**9.6 Parties.** 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 4 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.

**9.7 Order.** Any declaratory order or other order disposing of a petition pursuant to this rule shall constitute agency action subject to judicial review pursuant to section 24-4-106, C.R.S.

## **10.0 STATE PLUMBING INSPECTORS**

**10.1 Applicant.** All applicants for the position of state plumbing inspector must possess a current journeyman or master plumber license issued by the State of Colorado.

**10.2 Plumbing License.** Plumbing inspectors must maintain a current Colorado journeyman or master plumbing license.



# Notice of Rulemaking Hearing

**Tracking number**

2014-00931

**Department**

700 - Department of Regulatory Agencies

**Agency**

748 - Division of Professions and Occupations - Office of Speech-Language Pathology Certification

**CCR number**

4 CCR 748-1

**Rule title**

Rules Regulating Speech-Language Pathologist Certification, Practice, and Discipline

## Rulemaking Hearing

**Date**

10/02/2014

**Time**

01:30 PM

**Location**

DORA, 1560 Broadway St, Room 110D, Denver, CO 80202

**Subjects and issues involved**

Continuing Professional Competency

**Statutory authority**

Sections 24-4-103, 12-43.7-107, 12-43.7-113, C.R.S.

## Contact information

**Name**

Karen M.McGovern

**Title**

Program Director

**Telephone**

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# DEPARTMENT OF REGULATORY AGENCIES

## Division of Professions and Occupations Office of Speech-Language Pathology

### RULES REGULATING SPEECH-LANGUAGE PATHOLOGIST CERTIFICATION, PRACTICE, AND DISCIPLINE (4 CCR 748-1)

## NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING OCTOBER 2, 2014

Pursuant to Section 24-4-103, C.R.S., and Section 12-43.7-113, C.R.S., a public rule making hearing on will be held on Thursday, October 2, 2014 at 1560 Broadway, Conference Room 110D, Denver, Colorado 80202, beginning at 1:30 p.m.

Interested persons are encouraged to submit written comments regarding the attached proposed rule revisions to Karen McGovern, Program Director by email to [karen.mcgovern@state.co.us](mailto:karen.mcgovern@state.co.us) or by postal mail to Office of Speech-Language Pathology Certification, 1560 Broadway, Suite 1300, Denver, CO 80202, no later than Friday, September 26, 2014. In addition, at the time and place designated in this notice, the Director will afford interested parties an opportunity to submit written information and/or to make brief oral presentations unless the Director in her discretion determines that oral presentations are unnecessary. All submissions will be considered.

*The rules under consideration may be changed or modified after public comment and hearing.*

### SPECIFIC PURPOSE OF THIS RULEMAKING

The specific purpose of this rulemaking hearing is to promulgate Rule 9 and amend existing Rule 7 and Rule 8 with respect to the requirements of continuing professional competency and ensures that speech-language pathologists are familiar with the requirements of § 12-43.7-107.

### PROPOSED NEW AND AMENDED RULES

**The rules regulating speech-language pathologist certification, practice, and discipline with proposed revision are attached hereto.** Deleted material is shown ~~struck through~~, and new material is shown in **ALL CAPS**. Unaffected rules or portions of rules are reproduced.

BY ORDER OF THE OFFICE OF SPEECH-LANGUAGE PATHOLOGY CERTIFICATION



Karen M. McGovern, Program Director

# DEPARTMENT OF REGULATORY AGENCIES

## Division of Professions and Occupations Office of Speech-Language Pathology

### RULES REGULATING SPEECH-LANGUAGE PATHOLOGIST CERTIFICATION, PRACTICE, AND DISCIPLINE

#### 4 CCR 748-1

*[Editor's Notes follow the text of the Rules at the end of this CCR Document]*

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#### Basis, Purpose, and Statutory Authority

The basis for these rules is House Bill 12-1303, which is codified in Article 43.7 of Title 12, C.R.S., and is known as the Speech-Language Pathology Practice Act. The purpose of these rules is to regulate persons practicing speech-language pathology in Colorado by implementing the requirements of the Act. The rules generally include provisions regulating certification, reinstatement, continuing competency, reporting, liability insurance, patient records, fines, and non-certified practice. The statutory authority for these rules can be found in §§ 12-43.7-105(1), 106, 107, 108(1)(e), 110(2), 113, and 116(5); [12-70-101](#); [24-4-103](#); 24-4-105(11); ~~and~~ 24-34-102(8) and (8.5); [24-34-105](#); and, [24-34-107](#), C.R.S.

#### Rule 1 – Application for Certification

The purpose of this rule is to specify the form and manner of an application for speech-language pathologist certification, as required by § 12-43.7-106, C.R.S.

- A. An applicant for certification must:
1. Submit a completed application for certification in a manner prescribed by the Director;
  2. Submit with the application all fees established by the Director pursuant to § 12-43.7-106(6), C.R.S.;
  3. Attest that the applicant will, prior to providing speech-language pathology services to patients, maintain the professional liability insurance coverage required under Rule 6;
  4. Attest that the applicant has developed a written plan ensuring the security of patient records in compliance with § 12-43.7-116, C.R.S.;
  5. Attest that the information in the application is true and correct to the best of the applicant's knowledge and belief; and
  6. Submit additional information as may be required by the Director.

#### Rule 2 – Education and Clinical Fellowship Requirements

The purpose of this rule is to detail the educational and clinical fellowship requirements for certification set forth in § 12-43.7-106(1), C.R.S.

- A. An applicant for certification must have successfully completed a master's or higher degree in communication sciences and disorders granted by an accredited institution of higher education recognized by the United States Department of Education. An applicant is presumed to have met the requirements of this paragraph if the applicant has successfully completed a master's or higher degree in a speech-language pathology program that is accredited by the Council on Academic Accreditation of the American Speech-Language-Hearing Association or its successor association.
- B. An applicant for certification must have successfully completed a speech-language pathology clinical fellowship approved by either the Director or a Director-approved national certifying body. The American Speech-Language-Hearing Association is a Director-approved national certifying body.
- C. An applicant who holds a current Certificate of Clinical Competence (CCC) granted by the American Speech-Language-Hearing Association in speech-language pathology meets the education and clinical fellowship requirements of this rule.
- D. The Director does not require that an applicant maintain ASHA membership as a condition of certification.

### **Rule 3 – Examination Requirement**

The purpose of this rule is to clarify the examination requirement set forth in § 12-43.7-106(1)(c), C.R.S.

- A. An applicant is eligible for certification by examination only if the applicant:
  - 1. has passed the national examination approved by the American Speech-Language-Hearing Association or its successor association;
  - 2. has passed an examination that, in the Director's determination, is substantially equivalent to the examination approved by the American Speech-Language-Hearing Association or its successor association, subject to the requirements of paragraph (B) of this rule; or
  - 3. holds a current Certificate of Clinical Competence (CCC), granted by the American Speech-Language-Hearing Association or its successor association, in speech-language pathology.
- B. An applicant seeking certification under subparagraph (A)(2) of this rule bears the burden of proving to the Director that the examination is substantially equivalent to the examination approved by the American Speech-Language-Hearing Association or its successor association.

### **Rule 4 – Certification by Endorsement**

The purpose of this rule is to delineate the requirements for certification by endorsement set forth in 12-43.7-106(4), C.R.S.

- A. An applicant who holds a current, valid license or certification as a speech-language pathologist in another jurisdiction may apply for certification by endorsement.
- B. A jurisdiction that requires, as a condition of licensure or certification, a current Certificate of Clinical Competence (CCC) granted by the American Speech-Language-Hearing Association in speech-language pathology is deemed to have qualifications substantially equivalent to those required in Colorado.

- C. An applicant for certification by endorsement must meet the requirements set forth in Rules 1, 2, and 3. An endorsement applicant who was licensed or certified in another jurisdiction on the basis of a current Certificate of Clinical Competence (CCC) granted by the American Speech-Language-Hearing Association in speech-language pathology is deemed to have met the requirements of Rules 2 and 3.
- D. In addition to meeting the requirements set forth in Rules 1-3, an applicant for certification by endorsement must demonstrate competency to practice speech-language pathology. To demonstrate competency an applicant must submit, in a manner required by the Director, information establishing that the applicant:
  - 1. has actively practiced as a speech-language pathologist for at least 400 hours within a 12 month period during the three years immediately preceding the application;
  - 2. has completed, during the two years immediately preceding the application, 48 hours of continuing education that:
    - a. relates to the practice of speech-language pathology; and
    - b. meets the approval of the Director;
  - 3. holds a current Certificate of Clinical Competence (CCC) granted by the American Speech-Language-Hearing Association in speech-language pathology; or
  - 4. has otherwise maintained competency as a speech-language pathologist, as determined by the Director.

#### **Rule 5 – Certification Requirements: Credit for Military Experience**

The purpose of this rule is to outline the conditions and procedures governing the evaluation of an applicant's military training and experience under § 24-34-102(8.5), C.R.S.

- A. An applicant for certification as a speech-language pathologist may submit information about the applicant's education, training, or experience acquired during military service. It is the applicant's responsibility to provide timely and complete information for the Director's review.
- B. In order to meet the requirements for certification, such education, training, or experience must be substantially equivalent to the required qualifications that are otherwise applicable at the time the application is received by the Director.
- C. The Director will determine, on a case-by-case basis, whether the applicant's military education, training, or experience meet the requirements for certification.

#### **Rule 6 – Professional Liability Insurance**

The purpose of this rule is to delineate the professional liability insurance requirements set forth in § 12-43.7-106(2) and (4), C.R.S.

- A. A certificate holder who provides speech-language pathology services to patients shall maintain professional liability insurance coverage:
  - 1. with an insurance company authorized to do business in Colorado; and
  - 2. in an amount no less than one million dollars per claim and three million dollars per annum in the aggregate.

- B. A certificate holder who is not providing speech-language pathology services to patients is exempt from maintaining professional liability insurance coverage.
- C. An applicant or certificate holder shall submit proof of coverage to the Director upon request.

### **Rule 7 – Reinstatement of Expired Certification**

The purpose of this rule is to state the requirements for reinstatement of a certification that has expired, pursuant to §§ 24-34-102(8) and 24-34-105, C.R.S.

A. A.—An applicant seeking reinstatement of an expired certification must complete a reinstatement application, pay a reinstatement fee, attest to complying with the professional liability insurance coverage requirements of Rule 6, and attest that the applicant has developed a written plan ensuring the security of patient records in compliance with § 12-43.7-116, C.R.S.

B. AN APPLICANT SEEKING TO REINSTATE A CERTIFICATION THAT HAS BEEN EXPIRED FOR LESS THAN TWO YEARS FROM THE DATE OF RECEIPT OF THE REINSTATEMENT APPLICATION MUST PROVIDE DOCUMENTATION OF TEN (10) PROFESSIONAL DEVELOPMENT ACTIVITIES FOR EACH YEAR THE CERTIFICATE WAS LAPSED.

C.

B.—An applicant seeking to reinstate a certification that has been expired for ~~more than~~ two OR MORE years but less than five years from the date of receipt of the reinstatement application must demonstrate competency to practice, in a manner required by the Director, by:

1. providing verification of licensure or certification in good standing from another state, along with proof of active practice in that state for two of the previous five years from the date of application for reinstatement;
2. providing evidence of the applicant's completion of 30 hours of continuing education OR PROFESSIONAL DEVELOPMENT ACTIVITIES during the two years immediately preceding the application for reinstatement that:
  - a. relates to the practice of speech-language pathology; and
  - b. meets the approval of the Director;
3. providing documentation that the applicant has active certification by the American Speech-Language-Hearing Association; or
4. any other means approved by the Director.

C. An applicant seeking to reinstate a certification that has been expired for ~~more than five~~ OR MORE years from the date of receipt of the reinstatement application must demonstrate competency to practice, in a manner required by the Director, by:

1. providing verification of licensure or certification in good standing from another state, along with proof of active practice in that state for two of the previous five years from the date of application for reinstatement;

2. providing evidence of supervised practice for a period of no less than six months, subject to the terms established by the Director; or
3. any other means approved by the Director.

#### **Rule 8 – Inactive Certification Status AND REACTIVATION OF CERTIFICATION**

The purpose of this rule is to specify the regulations governing inactive certification status AND REACTIVATION OF CERTIFICATION AS authorized under § 12-70-101, C.R.S.

- A. A certified speech-language pathologist may request inactive certification status in the manner prescribed by Director.
- B. A speech-language pathologist with an inactive certificate shall not engage in any act or conduct that constitutes the practice of speech-language pathology.
- C. A speech-language pathologist with an inactive certificate is exempt from the continuing professional competency requirements of § 12-43.7-107, C.R.S., and Rule 9.
- D. Inactive certificate status does not:
  1. prevent the Director from investigating complaints or imposing discipline against a speech-language pathologist in accordance with Article 43.7 of Title 12, C.R.S.; or
  2. limit or restrict the Director's functions, duties, or obligations, under Article 43.7 of Title 12, C.R.S.
- E. Except as otherwise provided by this rule, a speech-language pathologist with an inactive certificate remains subject to all provisions of these rules and all provisions of Article 43.7 of Title 12, C.R.S.
- F. A speech-language pathologist may reactivate an inactive certificate by:
  1. submitting a completed application for reactivation and paying a fee established by the Director;
  2. submitting proof, in a manner prescribed by the Director, that the speech-language pathologist's licenses or certificates held in other states or jurisdictions are in good standing;
  3. attesting that the applicant will, prior to providing speech-language pathology services to patients, maintain the professional liability insurance coverage required under Rule 6; and
  4. demonstrating compliance with the Director's continuing professional competency rules with respect to certificate reactivation.

#### **Rule 9 – Continuing Professional Competency [Reserved]**

THE PURPOSE OF THIS RULE IS TO ESTABLISH A PROGRAM OF ONGOING CONTINUING PROFESSIONAL COMPETENCY AS SET FORTH IN § 12-43.7-107, C.R.S, WHEREIN A CERTIFIED SPEECH-LANGUAGE PATHOLOGIST SHALL MAINTAIN AND DEMONSTRATE CONTINUING PROFESSIONAL COMPETENCY IN ORDER TO RENEW, REINSTATE, OR REACTIVATE A CERTIFICATE TO PRACTICE SPEECH-LANGUAGE PATHOLOGY IN THE STATE OF COLORADO.

## A. DEFINITIONS

1. CONTINUING PROFESSIONAL COMPETENCY: THE ONGOING ABILITY OF A SPEECH-LANGUAGE PATHOLOGIST TO LEARN, INTEGRATE, AND APPLY THE KNOWLEDGE, SKILL, AND JUDGMENT TO PRACTICE AS A SPEECH-LANGUAGE PATHOLOGIST ACCORDING TO GENERALLY ACCEPTED STANDARDS AND PROFESSIONAL ETHICAL STANDARDS.
2. CONTINUING PROFESSIONAL DEVELOPMENT (CPD): THE DIRECTOR'S PROGRAM THROUGH WHICH A CERTIFICATE HOLDER CAN SATISFY THE CONTINUING PROFESSIONAL COMPETENCY REQUIREMENTS IN ORDER TO RENEW, REINSTATE, OR REACTIVATE A CERTIFICATE.
3. LEARNING PLAN: THE DIRECTOR APPROVED FORM THROUGH WHICH A CERTIFICATE HOLDER DOCUMENTS HIS/HER GOALS AND PLANS OF LEARNING THAT WERE DEVELOPED FROM HIS/HER REFLECTIVE SELF-ASSESSMENT (RSAT), WHICH IS DEFINED BELOW. A CERTIFICATE HOLDER SHALL EXECUTE HIS/HER LEARNING PLAN BY COMPLETING PROFESSIONAL DEVELOPMENT ACTIVITIES (PDA) AS REQUIRED BEFORE A CERTIFICATE IS RENEWED.
4. PROFESSIONAL DEVELOPMENT ACTIVITIES (PDA): LEARNING ACTIVITIES UNDERTAKEN TO INCREASE THE CERTIFICATE HOLDER'S KNOWLEDGE AND SKILL OR HONE EXISTING KNOWLEDGE AND SKILL FOR THE PURPOSE OF CONTINUING PROFESSIONAL COMPETENCY. PROFESSIONAL DEVELOPMENT ACTIVITIES ARE EQUIVALENT TO CLOCK HOURS; ONE PDA IS EQUAL TO ONE (1) CLOCK HOUR (60 MINUTES).
5. PROGRAM MANUAL: AN INSTRUCTIONAL GUIDE TO ASSIST THE CERTIFICATE HOLDER IN UNDERSTANDING THE CONTINUING PROFESSIONAL COMPETENCY REQUIREMENTS AND THE CONTINUING PROFESSIONAL DEVELOPMENT (CPD) PROGRAM.
6. REFLECTIVE SELF-ASSESSMENT TOOL (RSAT): A REFLECTIVE PRACTICE TOOL IN WHICH A CERTIFICATE HOLDER CAN REFLECT UPON HIS/HER KNOWLEDGE AND SKILLS PERTAINING TO THE FOUNDATIONAL AREAS OF SPEECH-LANGUAGE PATHOLOGY TAKING INTO ACCOUNT THE CERTIFICATE HOLDER'S CURRENT LEVEL AND AREA OF PRACTICE.

## B. CONTINUING PROFESSIONAL COMPETENCY REQUIREMENTS

1. EFFECTIVE AFTER THE 2014 RENEWAL OF A CERTIFICATE, OR UPON THE COMPLETION OF THE FIRST RENEWAL OF A CERTIFICATE THEREAFTER, THE CERTIFICATE HOLDER 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 AN ACCREDITING BODY OR AN ENTITY APPROVED BY THE DIRECTOR AS SET FORTH IN § 12-43.7-107(2), C.R.S. THIS STATUS IS HEREAFTER KNOWN AS "DEEMED STATUS" AS DESCRIBED IN SECTION D OF THIS RULE; OR



c. RECEIVING AN EXEMPTION FOR MILITARY SERVICE AS DEFINED IN § 12-70-102, C.R.S. MILITARY EXEMPTIONS MUST BE APPROVED BY THE DIVISION OF PROFESSIONS AND OCCUPATIONS. A CERTIFICATE HOLDER SEEKING A MILITARY EXEMPTION SHALL SUBMIT A REQUEST IN WRITING WITH EVIDENCE THAT HIS/HER MILITARY SERVICE MEETS THE CRITERIA ESTABLISHED IN § 12-70-102, C.R.S., AND SECTION E OF THIS RULE.

2. A CERTIFICATE HOLDER SHALL ATTEST AT THE TIME OF THE RENEWAL OF A CERTIFICATE TO HIS/HER COMPLIANCE WITH CONTINUING PROFESSIONAL COMPETENCY REQUIREMENTS.

#### C. CONTINUING PROFESSIONAL DEVELOPMENT PROGRAM

1. THE CONTINUING PROFESSIONAL DEVELOPMENT (CPD) PROGRAM ENTAILS THE FOLLOWING:

- a. THE CERTIFICATE HOLDER SHALL COMPLETE THE REFLECTIVE SELF-ASSESSMENT TOOL (RSAT) ONCE PER RENEWAL PERIOD. A CERTIFICATE HOLDER SHALL USE THE FORM APPROVED BY THE DIRECTOR.
- b. THE EXECUTION OF A LEARNING PLAN ONCE PER RENEWAL PERIOD THAT IS BASED UPON THE CERTIFICATE HOLDER'S REFLECTIVE SELF-ASSESSMENT TOOL (RSAT). THE CERTIFICATE HOLDER SHALL USE THE FORM APPROVED BY THE DIRECTOR.
- c. ACCRUAL OF TEN (10) PROFESSIONAL DEVELOPMENT ACTIVITIES (PDA) PER YEAR DURING EACH RENEWAL PERIOD.

2. PROFESSIONAL DEVELOPMENT ACTIVITIES (PDA)

- a. PROFESSIONAL DEVELOPMENT ACTIVITIES MUST BE RELEVANT TO THE CERTIFICATE HOLDER'S PRACTICE AS A SPEECH-LANGUAGE PATHOLOGIST AND PERTINENT TO HIS/HER LEARNING PLAN. THE DIRECTOR WILL NOT PRE-APPROVE SPECIFIC COURSES OR PROVIDERS. THE CERTIFICATE HOLDER SHALL DETERMINE WHICH ACTIVITIES AND TOPICS WILL MEET HIS/HER LEARNING PLAN, AND SELECT AN APPROPRIATE COURSE AND PROVIDER.
- b. PROFESSIONAL DEVELOPMENT ACTIVITIES ARE EQUIVALENT TO CLOCK HOURS; ONE PDA IS EQUAL TO ONE HOUR (60 MINUTES).
- c. PROFESSIONAL DEVELOPMENT ACTIVITIES ARE ORGANIZED INTO SIX (6) CATEGORIES. NO MORE THAN HALF (1/2) OF THE TOTAL REQUIRED PDA IN A RENEWAL CYCLE SHALL BE CREDITED TOWARD ANY ONE (1) CATEGORY. PROFESSIONAL DEVELOPMENT ACTIVITIES MUST BE EARNED THROUGH A MINIMUM OF TWO (2) CATEGORIES. SPECIFICALLY, FOR EACH YEAR OF A RENEWAL PERIOD, NO MORE THAN FIVE (5) PDA WILL BE CREDITED IN ANY ONE (1) CATEGORY. WITH THE EXCEPTION OF RULE 2(C)(2)(C)(III), ONE (1) PDA IS GRANTED PER ONE (1) CLOCK HOUR OF QUALIFYING ACTIVITY.
  - i. VOLUNTEER SERVICE.
  - ii. MENTORING/SUPERVISION
  - iii. PRESENTATIONS. FOR THIS CATEGORY, TWO (2) PDA ARE CREDITED FOR EVERY ONE (1) HOUR OF PRESENTATION

DELIVERY. THIS 2:1 RATIO ACKNOWLEDGES THE PREPARATION OF THE PRESENTATION. PDAS ARE CREDITED ONLY ONCE PER PRESENTATION.

iv. COURSEWORK

v. INDEPENDENT LEARNING

vi. GROUP STUDY

d. PROFESSIONAL DEVELOPMENT ACTIVITIES WILL BE ACCEPTED IF THE ACTIVITY IS INCLUDED IN THE CURRENT PROGRAM MANUAL. THE DIRECTOR HAS SOLE DISCRETION TO ACCEPT OR REJECT ACTIVITIES THAT ARE NOT IDENTIFIED IN THE CURRENT PROGRAM MANUAL.

e. PROFESSIONAL DEVELOPMENT ACTIVITIES WILL BE CREDITED TOWARD ONLY ONE (1) RENEWAL PERIOD.

3. AUDIT OF COMPLIANCE. THE FOLLOWING DOCUMENTATION IS REQUIRED FOR AN AUDIT OF COMPLIANCE OF A CERTIFICATE HOLDER'S PARTICIPATION IN THE CPD PROGRAM:

a. A LEARNING PLAN THAT IS SIGNED AND EXECUTED WHICH CONTAINS THE CERTIFICATE HOLDER'S GOALS IN THE FORM AND MANNER AS APPROVED BY THE DIRECTOR.

b. DOCUMENTATION OF THE REQUIRED PROFESSIONAL DEVELOPMENT ACTIVITY IN COMPLIANCE WITH THE CURRENT PROGRAM MANUAL AND THIS RULE.

c. THE DIRECTOR HAS SOLE DISCRETION TO ACCEPT OR REJECT PROFESSIONAL DEVELOPMENT ACTIVITIES THAT DO NOT MEET THE CRITERIA ESTABLISHED BY THE DIRECTOR AS DEFINED IN THE CURRENT PROGRAM MANUAL AND THIS RULE.

d. AS SET FORTH IN § 12-43.7-107(4), 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 SPEECH-LANGUAGE PATHOLOGIST OR OTHER PROFESSIONAL REGULATED UNDER THIS TITLE. A PERSON OR THE DIRECTOR SHALL NOT USE THE RECORDS OR DOCUMENTS UNLESS USED BY THE DIRECTOR TO DETERMINE WHETHER A SPEECH-LANGUAGE PATHOLOGIST IS MAINTAINING CONTINUING PROFESSIONAL COMPETENCY TO ENGAGE IN THE PROFESSION.

D. DEEMED STATUS. A CERTIFICATE HOLDER WHO SATISFIES THE CONTINUING PROFESSIONAL COMPETENCY REQUIREMENTS OF AN ACCREDITING BODY OR ENTITY APPROVED BY THE DIRECTOR PURSUANT TO § 12-43.7-107(2), C.R.S., MAY QUALIFY FOR DEEMED STATUS.

1. QUALIFICATION. IN ORDER TO QUALIFY FOR DEEMED STATUS UPON RENEWAL, THE CERTIFICATE HOLDER SHALL:

a. ATTEST TO HIS/HER 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. TEN (10) CONTACT HOURS OF LEARNING ACTIVITIES PER YEAR OF THE RENEWAL PERIOD; AND

iii. DEMONSTRATION OF COMPLETION OF CONTINUING COMPETENCY ACTIVITIES.

2. ADMINISTRATIVE APPROVAL. THE DIRECTOR HAS SOLE DISCRETION TO ADMINISTRATIVELY APPROVE ACCREDITING BODIES AND/OR ENTITIES 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. CERTIFICATE HOLDERS CLAIMING DEEMED STATUS ARE SUBJECT TO AN AUDIT OF COMPLIANCE. TO SATISFY AN AUDIT OF COMPLIANCE, THE CERTIFICATE HOLDER SHALL SUBMIT APPROPRIATE EVIDENCE OF PARTICIPATION IN A QUALIFYING PROGRAM THROUGH SUBMISSION OF:

a. A LETTER FROM THE ACCREDITING BODY OR ENTITY APPROVED BY THE DIRECTOR SPECIFYING THAT THE CERTIFICATE HOLDER HAS COMPLETED THE CONTINUING PROFESSIONAL COMPETENCY PROGRAM, OR

b. OTHER DOCUMENTATION APPROVED BY THE DIRECTOR WHICH REFLECTS THE CERTIFICATE HOLDER'S COMPLETION OF A PROGRAM OF CONTINUING PROFESSIONAL COMPETENCY.

E. MILITARY EXEMPTION. AS SET FORTH IN § 12-70-102, C.R.S., CERTIFICATE HOLDERS WHO HAVE BEEN CALLED TO FEDERALLY FUNDED ACTIVE DUTY FOR MORE THAN 120 DAYS FOR THE PURPOSE OF SERVING IN A WAR, EMERGENCY OR CONTINGENCY MAY REQUEST AN EXEMPTION FROM THE CONTINUING PROFESSIONAL COMPETENCY REQUIREMENTS FOR THE RENEWAL, REINSTATEMENT, OR REACTIVATION OF HIS/HER CERTIFICATION FOR THE ONE (1) YEAR RENEWAL PERIOD THAT FALLS WITHIN THE PERIOD OF SERVICE OR WITHIN SIX MONTHS FOLLOWING THE COMPLETION OF SERVICE.

1. MILITARY EXEMPTIONS MUST BE APPROVED BY THE DIVISION OF PROFESSIONS AND OCCUPATIONS. CERTIFICATE HOLDERS SEEKING A MILITARY EXEMPTION SHALL SUBMIT A REQUEST IN WRITING WITH EVIDENCE THAT HIS/HER 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 CERTIFICATE HOLDER SHALL ATTEST TO HIS/HER MILITARY EXEMPTION.

F. RECORDS RETENTION. A CERTIFICATE HOLDER SHALL RETAIN DOCUMENTATION DEMONSTRATING HIS/HER COMPLIANCE FOR TWO (2) COMPLETE RENEWAL PERIODS.

G. NON-COMPLIANCE. FALSIFYING AN ATTESTATION OR OTHER DOCUMENTATION REGARDING THE CERTIFICATE HOLDER'S COMPLIANCE WITH CONTINUING PROFESSIONAL COMPETENCY REQUIREMENTS CONSTITUTES THE FALSIFICATION OF INFORMATION IN AN APPLICATION AND MAY BE GROUNDS FOR DISCIPLINE PURSUANT TO §§ 12-43.7-110(2)(B) AND (K), C.R.S.

H. REINSTATEMENT AND REACTIVATION. A CERTIFICATE HOLDER SEEKING TO REINSTATE OR REACTIVATE A CERTIFICATE SHALL MEET THE CONTINUING PROFESSIONAL COMPETENCY REQUIREMENTS DETAILED IN RULE 7 AND RULE 8.

### **Rule 10 – Duty to Self-Report Certain Medical Conditions**

The purpose of this rule is to specify the notification requirements regarding a physical or mental illness or condition that affects a certificate holder's ability to practice speech-language pathology or practice as a speech-language pathologist with reasonable skill and safety to patients, pursuant to § 12-43.7-115, C.R.S.

- A. No later than 30 days from the date a physical or mental illness or condition affects a certified speech-language pathologist's ability to perform speech-language pathology services with reasonable skill and safety, the certified speech-language pathologist shall provide the Director, in writing, the following information:
1. The diagnosis and a description of the illness or condition;
  2. The date that the illness or condition was first diagnosed;
  3. The name of the current treatment provider and documentation from the current treatment provider confirming the diagnosis, date of onset, and treatment plan; and
  4. A description of the certified speech-language pathologist's practice and any modifications, limitations or restrictions to that practice that have been made as a result of the illness or condition.
- B. The certified speech-language pathologist shall notify the Director of any worsening of the illness or condition, or any significant change in the illness or condition that affects the certified speech-language pathologist's ability to practice with reasonable skill and safety, within 30 days of the change of the illness or condition. The certified speech-language pathologist shall provide the Director, in writing, the following information:
1. the name of the current treatment provider, documentation from the current treatment provider confirming the change of the illness or condition, the date that the illness or condition changed, the nature of the change of the illness or condition, and the current treatment plan; and
  2. a description of the certified speech-language pathologist's practice, and any modifications, limitations, or restrictions to that practice that have been made as a result of the change of condition.

- C. Compliance with this rule is a prerequisite for eligibility to enter into a Confidential Agreement with the Director pursuant to § 12-43.7-115(2), C.R.S. However, mere compliance with this rule does not require the Director to enter into a Confidential Agreement. Rather, the Director will evaluate all facts and circumstances to determine whether a Confidential Agreement is appropriate.
- D. If the Director discovers that a certified speech-language pathologist has a mental or physical illness or condition that affects the certified speech-language pathologist's ability to practice with reasonable skill and safety, and the certified speech-language pathologist has not timely notified the Director of such illness or condition, the certified speech-language pathologist may be subject to disciplinary action pursuant to § 12-43.7-110(2)(d)(I), C.R.S.

### **Rule 11 – Duty to Report Convictions, Judgments, and Adverse Actions**

The purpose of this rule is to clarify the requirements and procedures for reporting convictions, judgments, and other adverse actions in order to enforce the provisions of § 12-43.7-110, C.R.S.

- A. A certified speech-language pathologist shall report to the Director, in a manner established by the Director, within 30 days of:
  - 1. A felony conviction of the certificate holder, or a conviction of any crime related to the practice of speech-language pathology, whether under the laws of this or any other state or the United States (a guilty verdict, or a plea of guilty, nolo contendere, or no contest accepted by the court is considered a conviction);
  - 2. A disciplinary action imposed upon the certificate holder by another jurisdiction that licenses, certifies, or registers speech-language pathologists which would otherwise be a violation of § 12-43.7-110, C.R.S., including but not limited to a citation, sanction, probation, civil penalty, or a denial, suspension, revocation or modification of a license or certificate, whether it is imposed by consent decree, order, or other decision, for any cause other than failure to pay a license fee by the due date or failure to meet continuing professional education or competency requirements;
  - 3. Revocation or suspension by another state board, municipality, federal or state agency of any health services related license or certificate; or
  - 4. Any judgment, award, or settlement of a civil action or arbitration, in any jurisdiction, in which there was a final judgment or settlement against the licensee or certificate holder with respect to the practice of speech-language pathology.
- B. Report contents.
  - 1. If the event is an action by any governmental agency, the report to the Director must include the name of the agency, its jurisdiction, the case name, court docket, proceeding or case number by which the event is designated, and a copy of the consent decree, order, or decision.
  - 2. If the event is a felony conviction, the report to the Director must include the court, its jurisdiction, the case name, the case number, a description of the matter or a copy of the indictment or charges, and any plea or verdict entered by the court. Within 30 days of the imposition of sentence for a felony conviction, the certificate holder shall provide to the Director a copy of the imposition of sentence. Within 30 days of the completion of any terms of the sentence, the certificate holder shall provide written notice to the Director of the completion of the sentence terms.

3. If the event concerns a civil action or arbitration proceeding, the report to the Director must include the court or arbiter, the jurisdiction, the case name, the case number, a description of the matter or a copy of the complaint, and a copy of the verdict, the court or arbitration decision, or, if settled, the settlement agreement and court's order of dismissal.
- C. In addition to any report required under this rule, the speech-language pathologist may also submit a written statement of explanation.

### **Rule 12 – Duty to Report Change of Contact Information to the Director's Office**

The purpose of this rule is to clarify the requirement for certificate holders to notify the Director of a change in submitted information pursuant to § 24-34-107, C.R.S.

A certified speech-language pathologist shall report to the Office of Speech-Language Pathology Certification any name, address, telephone, or email change within 30 days of the change. The Office of Speech-Language Pathology Certification will not change a certified speech-language pathologist's information of record without explicit written notification from the certified speech-language pathologist. Notification in any written manner approved by the Division is acceptable.

### **Rule 13 – Use of Title**

The purpose of this rule is to clarify the appropriate use of authorized titles pursuant to § 12-43.7-104, C.R.S.

- A. A speech-language pathologist shall only use the titles authorized by § 12-43.7-104(1), C.R.S., in conjunction with the practice of speech-language pathology.
- B. A speech-language pathologist shall not use the term "Doctor" or "Dr." in conjunction with the practice of speech-language pathology unless the speech-language pathologist has successfully completed a doctoral degree in communication sciences and disorders as described in § 12-43.7-106(1)(a), C.R.S.

### **Rule 14 – Protection & Disposition of Patient Records**

The purpose of this rule is to specify a certified speech-language pathologist's responsibilities with respect to the patient access to, and security, maintenance, storage, disposal, and disposition of patient records as set forth in § 12-43.7-116, C.R.S.

- A. For purposes of this rule and § 12-43.7-116, C.R.S., "certified speech-language pathologist responsible for patient records" means a certified speech-language pathologist who is
  1. required under generally accepted standards of practice to document, without limitation, patient history, care, progress, or status; or
  2. responsible for patient access to, or the security, maintenance, storage, disposal, or disposition of patient records.
- B. A certified speech-language pathologist responsible for patient records shall comply with the requirements of § 12-43.7-116, C.R.S., and with state and federal laws pertaining to patient access to, or the security, maintenance, storage, disposal, or disposition of patient records.
- C. A certified speech-language pathologist responsible for patient records may comply with the requirements of § 12-43.7-116(1), C.R.S., by adopting a written plan used by a hospital, clinic, or other organization with whom the speech-language pathologist is affiliated, provided that the written plan complies with the requirements of this rule.

- D. A certified speech-language pathologist responsible for patient records shall comply with his or her written plan developed under § 12-43.7-116(1), C.R.S., to the extent said plan does not violate state or federal law.
- E. If a practice is composed of multiple certified speech-language pathologists responsible for patient records, the practice may provide the information required by § 12-43.7-116(3), C.R.S., on behalf of all certificate holders in the practice.
- F. In the case of an investigation, pending disciplinary action, or other administrative action undertaken by the Director, a certified speech-language pathologist shall retain patient records until the investigation, disciplinary action, or other administrative action is complete.

### **Rule 15 – Imposition of Fines**

The purpose of this rule is to establish a fine structure and the circumstances under which fines may be imposed by the Director as authorized by § 12-43.7-110(2), C.R.S.

- A. The Director may impose a fine in lieu of or in addition to any other disciplinary sanction.
- B. The Director may impose a separate fine for each violation of Article 43.7 of Title 12, C.R.S., any rule adopted by the Director, or any Order issued by the Director.
- C. The Director may impose fines consistent with the following fining schedule:
  - 1. For a certificate holder's first violation, a fine of no more than one thousand dollars (\$1,000.00).
  - 2. For a certificate holder's second violation, a fine of no more than two thousand five hundred dollars (\$2,500.00).
  - 3. For a certificate holder's third and any additional violations, a fine of no more than five thousand dollars (\$5,000.00).
- D. Unless ordered otherwise, a certificate holder shall pay any total fine amount of five hundred dollars (\$500.00) or less, including any applicable surcharge, at the time the Final Agency Order or Stipulation between the parties becomes effective. A certificate holder shall pay any total fine amount greater than five hundred dollars (\$500.00), including any applicable surcharge, in accordance with the terms of the Final Agency Order or Stipulation. A certificate holder who fails to pay a fine required pursuant to a Final Agency Order or Stipulation is subject to additional disciplinary action as set forth in Section 12-43.7-110(2)(e) and (r), C.R.S., including suspension or revocation of the certificate holder's speech-language pathologist certificate.
- E. Payment of a fine does not exempt the certificate holder from compliance with the statutes and rules governing the practice of speech-language pathology or any orders of the Director.
- F. Except as otherwise required by law, all fines collected under this rule will be transferred and credited to the State's General Fund.

### **Rule 16 – The Authorized Practice of Speech-Language Pathology by a Person Not Certified in Colorado**

The purpose of this rule is to outline the conditions under which a speech-language pathologist not registered in Colorado may practice for a limited period of time under § 12-43.7-108(1)(e), C.R.S.

- A. A legally qualified speech-language pathologist from another state or country may provide speech-language pathology services, without need for certification in Colorado, on behalf of a temporarily absent speech-language pathologist registered in this state. The uncertified practice may not occur more than once annually and may not exceed a total of thirty days' duration.
- B. The temporarily absent Colorado certified speech-language pathologist shall ensure that the visiting, uncertified speech-language pathologist possesses a current and active license, certification, or registration in good standing in another state or country.
- C. The temporarily absent Colorado certified speech-language pathologist shall provide the visiting, uncertified speech-language pathologist with the Colorado Speech-Language Pathology Practice Act, Article 43.7 of Title 12, C.R.S., and the Director's rules and policies governing the regulation of speech-language pathologists in Colorado.

#### **Rule 17 – Declaratory Orders**

The purpose of this rule is to establish procedures for the handling of requests for declaratory orders filed pursuant to the Colorado Administrative Procedure Act at § 24-4-105(11), C.R.S.

- A. Any person or entity may petition the Director for a declaratory order to terminate controversies or remove uncertainties as to the applicability of any statutory provision or of any rule or order of the Director.
- B. The Director will determine, at her discretion and without notice to petitioner, whether to rule upon such petition. If the Director determines not rule upon such a petition, the Director will promptly notify the petitioner of her action and state the reasons for such decision.
- C. In determining whether to rule upon a petition filed pursuant to this rule, the Director will consider the following matters, among others:
  - 1. Whether a ruling on the petition will terminate a controversy or remove uncertainties as to the applicability to petitioner of any statutory provisions or rule or order of the Director.
  - 2. Whether the petition involves any subject, question or issue that is the subject of a formal or informal matter or investigation currently pending before the Director or a court involving one or more petitioners.
  - 3. Whether the petition involves any subject, question or issue that is the subject of a formal or informal matter or investigation currently pending before the Director or a court but not involving any petitioner.
  - 4. Whether the petition seeks a ruling on a moot or hypothetical question or will result in an advisory ruling or opinion.
  - 5. Whether the petitioner has some other adequate legal remedy, other than an action for declaratory relief pursuant to C.R.C.P. 57, which will terminate the controversy or remove any uncertainty as to the applicability to the petitioner of the statute, rule, or order in question.
- D. Any petition filed pursuant to this rule must set forth the following:
  - 1. The name and address of the petitioner and whether the petitioner is certified pursuant to Title 12, Article 43.7, C.R.S.
  - 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 Director determines that she will rule on the petition, the following procedures apply:
1. The Director may rule upon the petition based solely upon the facts presented in the petition. In such a case:
    - a. Any ruling of the Director will apply only to the extent of the facts presented in the petition and any amendment to the petition.
    - b. The Director may order the petitioner to file a written brief, memorandum, or statement of position.
    - c. The Director may set the petition, upon due notice to petitioner, for a non-evidentiary hearing.
    - d. The Director may dispose of the petition on the sole basis of the matters set forth in the petition.
    - e. The Director may request the petitioner to submit additional facts in writing. In such event, such additional facts will be considered as an amendment to the petition.
    - f. The Director may take administrative notice of facts pursuant to the Colorado Administrative Procedure Act at § 24-4-105(8), C.R.S., and may utilize her experience, technical competence, and specialized knowledge in the disposition of the petition.
    - g. If the Director rules upon the petition without a hearing, she will promptly notify the petitioner of her decision.
  2. The Director may, at her discretion, set the petition for hearing, upon due notice to petitioner, for the purpose of obtaining additional facts or information or to determine the truth of any facts set forth in the petition or to hear oral argument on the petition. The hearing notice to the petitioner must set forth, to the extent known, the factual or other matters that the Director intends to inquire. For the purpose of such a hearing, to the extent necessary, the petitioner has the burden of proving all the facts stated in the petition; all of the facts necessary to show the nature of the controversy or uncertainty; and the manner in which the statute, rule, or order in question applies or potentially applies to the petitioner and any other facts the petitioner desires the Director to consider.
- F. The parties to any proceeding pursuant to this rule are the Director and the petitioner. Any other person may seek leave of the Director to intervene in such a proceeding, and leave to intervene will be granted at the sole discretion of the Director. A petition to intervene must set forth the same matters as are required by Section D of this Rule. Any reference to a "petitioner" in this rule also refers to any person who has been granted leave to intervene by the Director.
- G. Any declaratory order or other order disposing of a petition pursuant to this rule constitutes agency action subject to judicial review pursuant to the Colorado Administrative Procedure Act at § 24-4-106, C.R.S.

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**Editor's Notes**

## History

2013	Statement of Basis and Purpose, Rules 1 through 8, and Rules 10 through 17 adopted 3/28/2014; effective 5/15/2013.
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<u>2014</u>	<u>Amended Basis, Purpose, Statutory Authority, Rules 7 and 8 adopted 10/6/2014; effective 11/30/2014.</u>
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<u>2014</u>	<u>Rule 9 adopted 10/6/2014; effective 11/30/2014.</u>
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# Notice of Rulemaking Hearing

**Tracking number**

2014-00893

**Department**

1000 - Department of Public Health and Environment

**Agency**

1001 - Air Quality Control Commission

**CCR number**

5 CCR 1001-5

**Rule title**

REGULATION NUMBER 3 STATIONARY SOURCE PERMITTING AND AIR POLLUTANT EMISSION NOTICE REQUIREMENTS

## Rulemaking Hearing

**Date**

11/20/2014

**Time**

09:00 AM

**Location**

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

**Subjects and issues involved**

Regulation 3, Part F, Section VI

**Statutory authority**

Sections 25-7-105(1), 25-7-102, 25-7-109(1)(a), 25-7-109(2). Sections 24-4-103 and 25-7-110, 110.5 and 110.8 C.R.S., as applicable and amended.

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# DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

## Air Quality Control Commission

### REGULATION NUMBER 3

#### STATIONARY SOURCE PERMITTING AND AIR POLLUTANT EMISSION NOTICE REQUIREMENTS

#### 5 CCR 1001-5

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#### **PART F REGIONAL HAZE LIMITS - BEST AVAILABLE RETROFIT TECHNOLOGY (BART) AND REASONABLE PROGRESS (RP)**

The provisions of Section VI (Regional Haze Determinations) and VII (MRR) of Regulation 3, Part F shall be incorporated into Colorado's Regional Haze State Implementation Plan. All other Sections of Regulation 3, Part F are State-Only.

The provisions of Part 51, Appendix Y, 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 as modified by the following Regulation Number 3, Part F. Materials incorporated by reference are those in existence as July 6, 2005 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. The material incorporated by reference is also available through the United States Government Printing Office, online at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys). Parties wishing to inspect these materials should contact the Technical Secretary of the Commission, located at the Office of the Commission.

#### **I. Applicability**

The provisions of this regulation apply to existing stationary facilities (BART eligible sources), as defined in Section II.I. of this regulation, as well as to Reasonable Progress (RP) sources.

#### **II. Definitions**

##### **II.A. Adverse impact on visibility**

Means visibility impairment that interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the Federal Class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairments, and how these factors correlate with (1) times of visitor use of the Federal Class I area, and (2) the frequency and timing of natural conditions that reduce visibility. This term does not include effects on integral vistas.

##### **II.B. Available Technology**

Means that a technology is licensed and available through commercial sales.

##### **II.C. Applicable Technology**

Means a commercially available control option that has been or may soon be deployed on the same or a similar source type or a technology that has been used on a pollutant-bearing gas stream that is the same or similar to the gas stream characteristics of the source.

#### II.D. Average Cost Effectiveness

Means the total annualized costs of control divided by annual emissions reductions (the difference between baseline annual emissions and the estimate of emissions after controls). For the purposes of calculating average cost effectiveness, baseline annual emissions means a realistic depiction of anticipated annual emissions for the source. The source or the Division may use state or federally enforceable permit limits or estimate the anticipated annual emissions based upon actual emissions from a representative baseline period.

#### II.E. BART Alternative

Means an alternative measure to the installation, operation, and maintenance of BART that will achieve greater reasonable progress toward national visibility goals than would have resulted from the installation, operation, and maintenance of BART at BART-eligible sources within industry source categories subject to BART requirements.

#### II.F. BART-eligible source

Means an existing stationary facility as defined in Section II.I.

#### II.G. Best Available Retrofit Technology (BART)

Means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant that is emitted by an existing stationary facility. The emission limitation must be established, on a case-by-case basis, taking into consideration the technology available, the costs of compliance, the energy and non-air quality environmental impacts of compliance, any pollution control equipment in use or in existence at the source or unit, the remaining useful life of the source or unit, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.

#### II.H. Deciview

Means a measurement of visibility impairment. A deciview is a haze index derived from calculated light extinction, such that uniform changes in haziness correspond to uniform incremental changes in perception across the entire range of conditions, from pristine to highly impaired. The deciview haze index is calculated based on the following equation (for the purposes of calculating deciview, the atmospheric light extinction coefficient must be calculated from aerosol measurements):

$$\text{Deciview haze index} = 10 \ln_e (b_{\text{ext}}/10 \text{ Mm}^{-1})$$

Where  $b_{\text{ext}}$  = the atmospheric light extinction coefficient, expressed in inverse megameters ( $\text{Mm}^{-1}$ ).

#### II.I. Existing stationary facility

Means any of the following stationary sources of air pollutants, including any reconstructed source, which was not in operation prior to August 7, 1962, and was in existence on August 7, 1977, and has the potential to emit 250 tons per year or more of any visibility impairing air

pollutant. In determining potential to emit, fugitive emissions, to the extent quantifiable, must be counted.

II.I.1. Fossil-fuel fired steam electric plants of more than 250 million British thermal units (BTU) per hour heat input that generate electricity for sale

II.I.1.a. Boiler capacities shall be aggregated to determine the heat input of a plant

II.I.1.b. Includes plants that co-generate steam and electricity and combined cycle turbines

II.I.2. Coal cleaning plants (thermal dryers)

II.I.3. Kraft pulp mills

II.I.4. Portland cement plants

II.I.5. Primary zinc smelters

II.I.6. Iron and steel mill plants

II.I.7. Primary aluminum ore reduction plants

II.I.8. Primary copper smelters

II.I.9. Municipal incinerators capable of charging more than 250 tons of refuse per day

II.I.10. Hydrofluoric, sulfuric, and nitric acid plants

II.I.11. Petroleum refineries

II.I.12. Lime plants

II.I.13. Phosphate rock processing plants

Includes all types of phosphate rock processing facilities, including elemental phosphorous plants as well as fertilizer production plants

II.I.14. Coke oven batteries

II.I.15. Sulfur recovery plants

II.I.16. Carbon black plants (furnace process)

II.I.17. Primary lead smelters

II.I.18. Fuel conversion plants

II.I.19. Sintering plants

II.I.20. Secondary metal production facilities

Includes nonferrous metal facilities included within Standard Industrial Classification code 3341, and secondary ferrous metal facilities in the category "iron and steel mill plants."

#### II.I.21. Chemical process plants

Includes those facilities within the 2-digit Standard Industrial Classification 28, including pharmaceutical manufacturing facilities

#### II.I.22. Fossil-fuel boilers of more than 250 million BTUs per hour heat input

II.I.22.a. Individual boilers greater than 250 million BTU/hr, considering federally enforceable operational limits

II.I.22.b. Includes multi-fuel boilers that burn at least fifty percent fossil fuels

#### II.I.23. Petroleum storage and transfer facilities with a capacity exceeding 300,000 barrels

II.I.23.a. 300,000 barrels refers to total facility-wide tank capacity for tanks put in place after August 7, 1962 and in existence on August 7, 1977

II.I.23.b. Includes gasoline and other petroleum-derived liquids.

#### II.I.24. Taconite ore processing facilities

#### II.I.25. Glass fiber processing plants

#### II.I.26. Charcoal production facilities

Includes charcoal briquette manufacturing and activated carbon production

### II.J. Incremental Cost Effectiveness

Means the comparison of the costs and emissions performance level of a control option to those of the next most stringent option, as shown in the following formula:

Incremental Cost Effectiveness (dollars per incremental ton removed) =  $\frac{[(\text{Total annualized costs of control option}) - (\text{Total annualized costs of next control option})]}{[(\text{Next Control option annual emissions}) - (\text{control option annual emissions})]}$

### II.K. In existence

Means that the owner or operator has obtained all necessary preconstruction approvals or permits required by Federal, State, or local air pollution emissions and air quality laws or regulations and either has (1) begun, or caused to begin, a continuous program of physical on-site construction of the facility or (2) entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of construction of the facility to be completed in a reasonable time.

### II.L. In operation

Means engaged in activity related to the primary design function of the source.

### II.M. Integral vista

Means a view perceived from within the mandatory Class I Federal area of a specific landmark or panorama located outside the boundary of the mandatory Class I Federal area.

### II.N. Natural conditions

Means naturally occurring phenomena that reduce visibility as measured in terms of light extinction, visual range, contrast, or coloration.

#### II.O Plant

Means all emissions units at a stationary source.

#### II.P. Visibility-Impairing Air Pollutant

Includes the following:

II.P.1. Sulfur dioxide (SO<sub>2</sub>),

II.P.2. Nitrogen oxides (NO<sub>x</sub>) and

II.P.3. Particulate matter. (PM<sub>10</sub> will be used as the indicator for particulate matter. Emissions of PM<sub>10</sub> include the components of PM<sub>2.5</sub> as a subset.).

### **III. Sources required to Perform a BART Analysis**

Each source that the Division determines is BART-eligible and subject to BART shall complete a BART analysis under Section IV. The Division shall provide written notice to each source determined to be subject to BART. Within twenty calendar days of the mailing of such notice a source may appeal such determination to the Commission by filing a petition for a hearing with the Commission. Any such hearing shall be subject to Section VI. of the Procedural Rules.\_

#### III.A. Determining Potential to Emit for a BART Source

For the purposes of determining whether the potential to emit of an existing stationary source is greater than 250 tpy the potential emissions of visibility impairing pollutants from the existing stationary source shall include the emissions from all BART-eligible units which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same Major Group (*i.e.*, which have the same two-digit code) as described in the Standard Industrial Classification Manual.

#### III.B. Identification of sources subject to BART

III.B.1. Identification of sources subject to BART shall be performed in accordance with EPA's guidelines for BART determinations under the regional haze rule 40 CFR Part 51, Appendix Y. A BART-eligible source described in Section III.A, above, is subject to BART unless valid air quality dispersion modeling demonstrates that the source will not cause or contribute to visibility impairment in any Class I area.

III.B.1.a. A single source that is responsible for a 1.0 deciview change or more is considered to "cause" visibility impairment in any Class I area.

III.B.1.b. A single source that is responsible for a 0.5 deciview change or more is considered to "contribute" visibility impairment in any Class I area.

III.B.1.c. A single source is exempt from BART if the 98<sup>th</sup> percentile daily change in visibility, as compared against natural background conditions, is less than 0.5 deciviews at all Class I federal areas for each year modeled and for the entire multi-year modeling period.



III.B.2. The Division will perform air quality dispersion modeling for each source identified as BART-eligible, for all visibility impairing pollutants, for class I areas. The modeling results will be provided to each source.

#### IV. BART Analysis

##### IV.A. Presumptive BART for Coal Fired Power Plants

###### IV.A.1. Plants with a Generating Capacity of 750 MW or Greater

BART-eligible coal fired power plants with a generating capacity of 750 MW or GREATER is presumed to be able to meet the presumptive limits. Regardless of whether or not a unit can meet the presumptive BART limits the source must complete a BART analysis.

###### IV.A.2. Other Coal Fired Power Plants

The Division shall use the presumptive BART limits of section IV.A.3. as guidelines and may establish a BART level for the unit either above or below the presumptive BART level based on the BART determination.

###### IV.A.3. Coal-Fired Electric Generating Units

###### IV.A.3.a. Sulfur Dioxide

Coal-Fired Electric Generating Units: 95 percent reduction or 0.15 lb SO<sub>2</sub>/mmBTU.

###### IV.A.3.b. Nitrogen Oxides

Unit Type	Coal Type	NO <sub>x</sub> limit (lb/mm BTU)
Dry bottom Wall fired	Bituminous	0.39
	Sub-bituminous	0.23
	Lignite	0.29
Tangential Fired	Bituminous	0.28
	Sub-bituminous	0.15
	Lignite	0.17
Cell Burners	Bituminous	0.40
	Sub-bituminous	0.45
Dry-turbo-fired	Bituminous	0.32
	Sub-bituminous	0.23
Wet-bottom tangential-	Bituminous	0.62

fired		
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IV.B. Each source subject to BART pursuant to Section III shall submit a BART application for a construction permit, which shall include a BART analysis, a proposal for BART at the source and a justification for the BART proposal to the Division by August 1, 2006.

IV.B.1. The BART analysis must include, at a minimum:

IV.B.1.a. A list of the demonstrated and potentially applicable retrofit control options for the units subject to BART. Sources are not required to evaluate control options, which are less effective than the controls currently installed on the BART subject source or unit.

IV.B.1.b. A discussion of the technical feasibility of each of the technologies identified in Section IV.B.1.a. This discussion should include an analysis of whether the proposed technology is available and applicable. If the source determines that a technology is not technically feasible the discussion shall include a factual demonstration that the option is not commercially available or that unusual circumstances preclude its application to the emission unit.

IV.B.1.c. A ranking of all the technically feasible technologies identified in Section IV.B.1.b. The ranking shall take into account various emission performance characteristics of the technologies. The technologies should be ranked from lowest emissions to highest emissions for each pollutant and each emissions unit. The ranking should include a discussion of pollution control equipment in use at the unit, including upgrading existing equipment if technically feasible.

IV.B.1.d. An evaluation of the impacts of the technically feasible BART options. The impact evaluation shall include:

IV.B.1.d.(i). An estimate of the Average Cost Effectiveness of each of the control technologies identified as technically feasible in Section IV.B.1.b. This analysis shall specify the emissions unit being controlled, the design parameters for the emission controls and cost estimates based on those design parameters. The remaining useful life of the source or unit may be taken into account in the cost of the technologies. The remaining useful life is the difference between: (1) The date that controls will be put in place (capital and other construction costs incurred before controls are put in place can be rolled into the first year); and (2) The date the facility permanently stops operations. Where this affects the BART determination, this date should be assured by a federally- or State-enforceable restriction preventing further operation. The analysis must also include the energy and non-air quality environmental impacts of control options.

IV.B.1.d.(ii). An analysis of the incremental cost effectiveness. Before a control technology can be eliminated the source shall evaluate the incremental cost effectiveness in combination with the total cost effectiveness in order to justify elimination of a control option.

IV.B.1.d.(iii). An evaluation of the visibility impacts for each BART option according to modeling guidance provided by the Division.

IV.B.1.d.(iv). An evaluation of non-air quality impacts. The non-air quality impacts may include water use increases, solid waste disposal, or other adverse environmental impacts.

IV.B.1.d.(v). An evaluation of the energy impacts. The energy impact analysis should look at the energy requirements of the control technology and any energy penalties or benefits associated with the control. The analysis should also consider direct energy consumption and may address concerns over the use of locally scarce fuels or the use of locally or regionally available coal.

IV.B.1.d.(v).(1). The energy impacts analysis may consider whether there are relative differences between alternatives regarding the use of locally or regionally available coal, and whether a given alternative would result in significant economic disruption or unemployment.

IV.B.1.e. An evaluation and justification of the proposed averaging time to evaluate compliance with the proposed emission limitations.

IV.B.1.f. Coal-fired power plants may, in their discretion, include in the BART analysis an evaluation of representative characteristics (including nitrogen content) of coal from sources they reasonably expect to use, to the extent such characteristics tend to result in higher NO<sub>x</sub> emissions than coals of the same classification from alternative sources. The analysis also may consider whether a particular BART limit might lead the power plant not to use coal from a particular mine due to such coal characteristics, and the extent to which such a decision might result in economic disruption or unemployment at the mine or in nearby communities.

IV.B.1.g. Sources subject to a MACT standard may limit the analysis for those pollutants covered by the MACT to a discussion of new technologies that have become available since the promulgation of the MACT.

IV.B.2. Sources with a potential to emit of less than 40 tons per year of SO<sub>2</sub> and NO<sub>x</sub> and less than 15 tpy of PM<sub>10</sub> may exclude those pollutants from the BART determination.

IV.B.3. Selecting a best alternative

The source shall submit a proposal for BART at the source or unit(s), including a justification for selecting the technology proposed. The justification shall be based on the following factors: (1) the technology available; (2) the costs of compliance; (3) the energy and non-air environmental impacts of compliance; (4) any pollution control equipment in use at the source or unit(s); (5) the remaining useful life of the source or unit(s) and; (6) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.

IV.B.4. Schedules to comply with BART emissions limits

IV.B.4.a. The technology analysis shall include a schedule to comply with BART or a BART alternative as expeditiously as practicable following EPA approval of the state implementation plan for regional haze that incorporates such BART requirements. The source must comply with BART or BART alternative emissions limits no later than 5 years after approval of the state implementation plan by EPA for regional haze.

IV.B.4.b. A source or unit subject to BART may implement a BART alternative in lieu of BART if such BART alternative is authorized by the Division.

#### IV.C. BART Alternative

As an alternative to BART for a source or sources, the Division may approve a BART Alternative. If the Division approves source grouping as a BART Alternative, only sources (including BART-eligible and non-BART eligible sources) within the same source category (as defined by SIC or NAICS code) within the same airshed may be grouped together.

IV.C.1. If a Source (s) proposes a BART Alternative, the resultant emissions reduction and visibility impacts must be compared with those that would result from the BART options evaluated for the source(s).

IV.C.2. Source (s) proposing a BART alternative shall include in the BART analysis an analysis and justification of the averaging period and method of evaluating compliance with the proposed emission limitation.

#### IV.D. Emission limits

##### IV.D.1. Coal-Fired Electric Generating Units

Compliance with the emission limitation is determined on a 30-day rolling average basis for SO<sub>2</sub> and NO<sub>x</sub>, or may be determined by the Division based on the BART analysis submitted by the source. The emission limit shall be included in the facility's permit.

##### IV.D.2. Other Sources Subject to BART

The Division will establish emission limits with averaging times consistent with established reference methods and include the limit in the facility's permit.

IV.E. A source that has installed BART for regional haze or implemented a Division approved BART alternative for regional haze is exempted from the imposition of further controls pursuant to regional haze BART with respect to those pollutants that are controlled through BART or the BART alternative for Regional Haze and is exempted from the imposition of further controls necessary for reasonable progress during the first reasonable progress planning period. Sources may be subject to additional controls or emission reductions based on reasonable progress requirements in planning periods beyond the first planning period under the regional haze State Implementation Plan.

#### IV.F. Division Review and Approval

IV.F.1. The Division shall review and approve, disapprove or amend the proposed BART technology or BART alternative, including the emission limit, schedule for compliance for the facility, and averaging period. The Division shall consider additional information both submitted and not submitted by the source that is

deemed relevant. The Division shall submit its BART determination to the Commission for review and approval.

IV.F.2. If two or more sources are grouped together pursuant to Section IV.C. the Division shall establish recordkeeping and reporting requirements sufficient to determine that the sources meet the BART alternative emission limits.

IV.F.3. Any source seeking to modify the BART determination for that facility must submit a new BART analysis for review by the Division.

## V. Challenge of Division BART Determinations and Enforceable Agreements.

V.A. Persons affected or aggrieved by a BART determination may challenge the decision of the Commission pursuant to Article 4 of Title 24, C.R.S.

## VI. Regional Haze Determinations

VI.A. BART Determinations

VI. A.1. The provisions of this Section VI.A of Regulation Number 3, Part F shall be incorporated into Colorado's Regional Haze State Implementation Plan.

VI.A.2. The sources listed below shall not emit or cause to be emitted nitrogen oxides (NO<sub>x</sub>), sulfur dioxide (SO<sub>2</sub>), or particulate in excess of the following limits:

BART Determinations for Colorado Sources			
Unit	NO <sub>x</sub> Emission Limit	SO <sub>2</sub> Emission Limit	Particulate Emission Limit
CENC Unit 4	0.37 lb/MMBtu (30-day rolling average) or 0.26 lb/MMBtu Combined Average for Units 4 and 5 (30-day rolling average)	1.0 lb/MMBtu (30-day rolling average)	0.07 lb/MMBtu
CENC Unit 5	0.19 lb/MMBtu (30-day rolling average) or 0.26 lb/MMBtu Combined Average for Units 4 and 5 (30-day rolling average)	1.0lb/MMBtu (30-day rolling average)	0.07 lb/MMBtu
Craig Unit 1	0.28-07 lb/MMBtu (30-day rolling average) <a href="#">by 8/31/2021</a>	0.11 lb/MMBtu (30-day rolling average)	0.03 lb/MMBtu
Craig Unit 2	0.08 lb/MMBtu (30-day rolling average)*	0.11 lb/MMBtu (30-day rolling average)	0.03 lb/MMBtu

\* The NOx emission limits for Craig Units 1 and 2 constitute a BART Alternative.

Unit	NOx Emission Limit	SO2 Emission Limit	Particulate Emission Limit
Comanche Unit 1	0.20 lb/MMBtu (30-day rolling average)  0.15 lb/MMBtu (combined annual average for units 1 & 2)	0.12 lb/MMBtu (individual unit 30-day rolling average)  0.10 lb/MMBtu (combined annual average for units 1 & 2)	0.03 lb/MMBtu
Comanche Unit 2	0.20 lb/MMBtu (30-day rolling average)  0.15 lb/MMBtu (combined annual average for units 1 & 2)	0.12 lb/MMBtu (individual unit 30-day rolling average)  0.10 lb/MMBtu (combined annual average for units 1 & 2)	0.03 lb/MMBtu
Hayden Unit 1	0.08lb/MMBtu (30-day rolling average)	0.13 lb/MMBtu (30-day rolling average)	0.03 lb/MMBtu
Hayden Unit 2	0.07 lb/MMBtu (30-day rolling average)	0.13 lb/MMBtu (30-day rolling average)	0.03 lb/MMBtu
Martin Drake Unit 5	0.31 lb/MMBtu (30-day rolling average)	0.26 lb/MMBtu (30-day rolling average)	0.03 lb/MMBtu
Martin Drake Unit 6	0.31lb/MMBtu (30-day rolling average)	0.13lb/MMBtu (30-day rolling average)	0.03 lb/MMBtu

Martin Drake Unit 7	0.29 lb/MMBtu (30-day rolling average)	0.13lb/MMBtu (30-day rolling average)	0.03 lb/MMBtu
CEMEX – Lyons Kiln	255.3 lbs/hr (30-day rolling average)  901.0 tons/year (12-month rolling average)	25.3 lbs/hr (12-month rolling average)  95.0 tons/yr (12-month rolling average)	0.275 lb/ton of dry feed 20% opacity
CEMEX – Lyons Dryer	13.9 tons/yr	36.7 tons/yr	22.8 tons/yr  10% opacity

VI.A.3. Each source listed in the above tables must comply with the above limits and averaging times as expeditiously as practicable, but in no event later than five years after EPA approval of Colorado's state implementation plan for regional haze, or relevant component thereof. Each source listed in the above tables must maintain control equipment or operational practices required to comply with the above limits and averaging times, and establish procedures to ensure that such equipment or operational practices are properly operated and maintained.

VI.A.4. [Except concerning the Craig Unit 1 NOx emission limit, the sources shall submit to the Division a proposed compliance schedule within sixty days after EPA approves the BART portion of the Regional Haze SIP. Craig Unit 1 must comply with the above NOx limit and averaging time no later than August 31, 2021.](#) The Division shall publish these proposed schedules and provide for a thirty-day public comment period following publication. The Division shall publish its final determinations regarding the proposed schedules for compliance within sixty days after the close of the public comment period and will respond to all public comments received.

#### VI.B. Reasonable Progress Determinations

VI.B.1. The provisions of this Section VI.B of Regulation Number 3, Part F shall be incorporated into Colorado's Regional Haze State Implementation Plan.

VI.B.2. The sources listed below shall not emit or cause to be emitted nitrogen oxides (NOx), sulfur dioxide (SO2), or particulate in excess of the following limits:

RP Determinations for Colorado Sources			
Emission Unit	NOx Emission Limit	SO2 Emission Limit	Particulate Emission Limit
<b>Rawhide</b> Unit 101	0.145 lb/MMBtu (30-day rolling average)	0.11 lb/MMBtu (30-day rolling average)	0.03 lb/MMBtu
<b>CENC</b> Unit 3	246 tons per year (12-month rolling total)	1.2 lb/MMBtu	0.07 lb/MMBtu
<b>Nixon</b>	0.21 lb/MMBtu (30-day rolling average)	0.11 lb/MMBtu (30-day rolling average)	0.03 lb/MMBtu
<b>Clark</b> Units 1 & 2  Shutdown 12/31/2013	Shutdown 12/31/2013	Shutdown 12/31/2013	Shutdown 12/31/2013
<b>Holcim - Florence</b> Kiln	2.73 lbs/ton clinker (30-day rolling average)  2,086.8 tons/year	1.30 lbs/ton clinker (30-day rolling average)  721.4 tons/year	246.3 tons/year
<b>Nucla</b>	0.5 lb/MMBtu (30-day rolling average)	0.4 lb/MMBtu (30-day rolling average)	0.03 lb/MMBtu

RP Determinations for Colorado Sources			
Emission Unit	NOx Emission Limit	SO2 Emission Limit	Particulate Emission Limit
<b>Craig</b> Unit 3	0.28 lb/MMBtu (30-day rolling average)	0.15 lb/MMBtu (30-day rolling average)	0.013 lb/MMBtu filterable PM  0.012 lb/MMBtu filterable PM10



RP Determinations for Colorado Sources			
Emission Unit	NOx Emission Limit	SO2 Emission Limit	Particulate Emission Limit
<b>Cameo</b>  Shutdown 12/31/2011	Shutdown 12/31/2011	Shutdown 12/31/2011	Shutdown 12/31/2011

VI.B.3. Each source listed in the above table must comply with the above limits and averaging times as expeditiously as practicable, but in no event later than December 31, 2017. Each source listed in the above table must maintain control equipment or operational practices required to comply with the above limits and averaging times, and establish procedures to ensure that such equipment or operational practices are properly operated and maintained.

VI.B.4. The sources shall submit to the Division a proposed compliance schedule within sixty days after EPA approves the RP portion of the Regional Haze SIP. The Division shall publish these proposed schedules and provide for a thirty-day public comment period following publication. The Division shall publish its final determinations regarding the proposed schedules for compliance within sixty days after the close of the public comment period and will respond to all public comments received.

#### VI.C. Public Service Company of Colorado (PSCo) BART Alternative Program

VI.C.1. The provisions of this Section VI.C of Regulation Number 3, Part F (with the exception of the SO2 cap of subsection VI.C.4) shall be incorporated into Colorado's Regional Haze State Implementation Plan.

VI.C.2. The sources listed below shall not emit or cause to be emitted nitrogen oxides (NOx), sulfur dioxide (SO2), or particulate in excess of the following limits, after the following compliance dates:

BART Alternative Program Determinations for PSCo Sources			
Emission Unit	NOx Emission Limit	SO2 Emission Limit	Particulate Emission Limit
<b>Cherokee *</b>  Unit 1  Shutdown No later than 7/1/2012	0  Shutdown No later than 7/1/2012	0  Shutdown No later than 7/1/2012	0  Shutdown No later than 7/1/2012

<b>Cherokee</b> Unit 2 Shutdown 12/31/2011	0  Shutdown 12/31/2011	0  Shutdown 12/31/2011	0  Shutdown 12/31/2011
<b>Cherokee</b> Unit 3 Shutdown No later than 12/31/2016	0  Shutdown No later than 12/31/2016	0  Shutdown No later than 12/31/2016	0  Shutdown No later than 12/31/2016
<b>Cherokee</b> Unit 4	0.12 lb/MMBTU (30-day rolling average) by 12/31/2017  Natural Gas Operation 12/31/2017	7.81 tpy (rolling 12 month average)  Natural Gas Operation 12/31/2017	0.03 lbs/MMBtu  Natural Gas Operation 12/31/2017
<b>Valmont</b> Unit 5 Shutdown 12/31/2017	0  Shutdown 12/31/2017	0  Shutdown 12/31/2017	0  Shutdown 12/31/2017
<b>Pawnee</b>	0.07 lb/MMBTU (30-day rolling average) by 12/31/2014	0.12 lbs/MMBtu (30-day rolling average) by 12/31/2014	0.03 lbs/MMBtu
<b>Arapahoe**</b> Unit 3 Shutdown 12/31/2013	0  Shutdown 12/31/2013	0  Shutdown 12/31/2013	0  Shutdown 12/31/2013
<b>Arapahoe</b> Unit 4	600 tpy on (rolling 12 month average)  Natural Gas operation 12/31/2014	1.28 tpy (rolling 12 month average)  Natural Gas operation 12/31/2014	0.03 lbs/MMBtu  Natural Gas operation 12/31/2014

\* 500 tpy NOx will be reserved from Cherokee Station for netting or offsets

\*\* 300 tpy NOx will be reserved from Arapahoe Station for netting or offsets for additional natural gas generation

VI.C.3. Each source listed in the above table must either shut down or comply with the above limits and averaging times no later than the compliance date set forth in the above table. Each source listed in the above table must maintain any applicable control equipment required to comply with the above limits and averaging times, and establish procedures to ensure that such equipment is properly operated and maintained.

VI.C.4. In addition to the above listed emission limits and compliance dates, between 1/1/2013 and 12/31/2015, Cherokee Units 3 and 4 and Valmont, considered as a whole, shall not emit in excess of 4,200 tons of SO<sub>2</sub> per year as determined on a calendar year annual basis. Between 1/1/2016 and 12/31/2017 Cherokee Unit 4 and Valmont considered as a whole, shall not emit in excess of 3,450 tons of SO<sub>2</sub> per year as determined on a calendar year annual basis.

## **VII. Monitoring, Recordkeeping, and Reporting for Regional Haze Limits**

The provisions of this Section VII of Regulation 3, Part F shall be incorporated into Colorado's Regional Haze State Implementation Plan.

### **Federal Regulations Adopted by Reference**

The following regulations promulgated by the United States Environmental Protection Agency (EPA) were previously adopted by the Colorado Air Quality Control Commission and are thereby already incorporated by reference:

40 CFR Part 60 and Appendices (As incorporated by reference within Commission Regulation Number 6, 5 CCR 1001-8)

40 CFR Part 63, Subpart A - National Emission Standards for Hazardous Air Pollutants General Provisions and Subpart LLL - National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry (As incorporated by reference within Commission Regulation Number 8, Part A, 5 CCR 1001-10).

40 CFR Part 64 (As incorporated by reference within Commission Regulation Number 3, Part C Section XIV., 5 CCR 1001-5)

40 CFR Part 75 including Performance Specifications and Appendices (As incorporated by reference within Commission Regulation Number 6, 5 CCR 1001-8)

### **VII.A. Definitions**

VII.A.1. "BART alternative program unit" means any unit subject to a Regional Haze emission limit contained in the Table in Regulation Number 3, Part F, Section VI.C.

VII.A.2. "BART unit" means any unit subject to a Regional Haze emission limit contained in the Table in Regulation Number 3, Part F, Section VI.A.

VII.A.3. "Continuous emission monitoring system" or "CEMS" means the equipment required by Regulation Number 3, Part F, Section VII, to sample, analyze, measure, and provide (using an automated data acquisition and handling system (DAHS)), a permanent record of SO<sub>2</sub> or NO<sub>x</sub> emissions, other pollutant emissions, diluents, or stack gas volumetric flow rate.

VII.A.4. "Operating day" means any twenty-four-hour period between midnight and the following midnight during which any fuel is combusted at any time in a BART unit, BART alternative program unit, or Reasonable Progress unit.

VII.A.5. "Reasonable Progress unit" or "RP unit" means any unit subject to a Regional Haze emission limit contained in the Table in Regulation Number 3, Part F, Section VI.B.

VII.A.6. "Regional Haze emission limit" means any of the emission limits specified in the Tables contained in Regulation Number 3, Part F, Section VI.

VII.B. Monitoring/Compliance Determination: SO<sub>2</sub> and NO<sub>x</sub> Regional Haze Limits

VII.B.1. BART, RP, and BART alternative program units with SO<sub>2</sub> and NO<sub>x</sub> CEMS.

VII.B.1.a. All Boilers, except CENC and Clark boilers.

The owner or operator of a boiler subject to this section shall comply with the Part 75 monitoring and recordkeeping requirements as incorporated by reference into this regulation with the exception of the continuous emission monitoring system (CEMS) data substitution and bias adjustment requirements.

At all times after the compliance deadline specified in Regulation Number 3, Part F, Section VI.A.3., VI.B.3. or VI.C.3., the owner/operator of each BART, RP, or BART alternative program unit shall maintain, calibrate, and operate a CEMS, in full compliance with the requirements found at 40 CFR Part 75 not excluded above, to accurately measure from such unit SO<sub>2</sub>, NO<sub>x</sub>, diluents, and stack gas volumetric flow rate as such parameters are relevant to the applicable emission limit. The CEMS shall be used to determine compliance with the SO<sub>2</sub> and NO<sub>x</sub> Regional Haze emission limits for each such unit. Such limits are expressed in units of pounds per million Btu. The owner/operator shall calculate emissions in the applicable units.

In determining compliance with the SO<sub>2</sub> and NO<sub>x</sub> Regional Haze limits, all periods of emissions shall be included, including startups, shutdowns, emergencies, and malfunctions.

VII.B.1.a.(i). Pounds Per Million Btu Regional Haze Limits

For any hour in which fuel is combusted in the BART, RP, or BART alternative program unit, owner/operator shall calculate hourly average SO<sub>2</sub> and NO<sub>x</sub> concentrations in pounds per million Btu at the CEMS in accordance with the requirements of 40 CFR Part 75 except for Part 75 requirements excluded by Section VII. B.1.a. These hourly averages shall then be used to determine compliance in accordance with the particular limit's averaging period, as follows:

VII.B.1.a.(i).(1). Regional Haze limits with a 3-hour averaging period:  
Emissions shall be calculated on a 3-hour rolling average basis. At the end of each operating hour, the owner/operator shall calculate and record a new 3-hour average emission rate in lb/MMBtu from the arithmetic average of the valid hourly emission rates from the CEMS for the previous three operating hours. (An operating hour is any hour in which fuel is combusted for any time in the unit.)

VII.B.1.a.(i).(2). Regional Haze limits with a 30-day averaging period:  
Before the end of each operating day, the owner/operator shall calculate and record the 30-day rolling average emission rate in lb/MMBtu from all valid hourly emission values from the CEMS for the previous 30 operating days.

VII.B.1.a.(i).(3). Regional Haze limits with a 90-day averaging period:  
Before the end of each operating day, the owner/operator shall calculate and record the 90-day rolling average emission rate in lb/MMBtu from all valid hourly emission values from the CEMS for the previous 90 operating days.

VII.B.1.a.(i).(4). Regional Haze limits with a 12-month averaging period:  
Before the end of each month, the owner/operator shall calculate and record the 12-month rolling average emission rate in lb/MMBtu from all valid hourly emission values from the CEMS for the previous 12 months.

VII.B.1.a.(i).(5). Regional Haze limits with an annual calendar averaging period: Emissions shall be calculated on a calendar year basis. Within 30 days after the end of each calendar year, the owner/operator shall calculate and record a new emission rate in lb/MMBtu from the arithmetic average of all valid hourly emission rates from the CEMS for the preceding year.

VII.B.1.a.(i).(6). Comanche Units 1 and 2 Regional Haze combined annual average limits. The combined annual limitations for NOX and SO2 are on a 365-operating day rolling average. Before the end of each operating day, the owner/operator shall calculate and record an annual rolling average using data from the previous 365 operating days in accordance with the following equation.

$$\text{Combined emission rate (lb/MMBtu)} = [(ER1)(HI1) + (ER2)(HI2)] / (HI1 + HI2)$$

Where: ER1 = average emission rate over the 365 operating day period. This is an average of all valid hours within the 365 operating day period for Unit 1.

HI1 = total heat input over the 365 operating day period for Unit 1.

ER2 = average emission rate over the 365 operating day period. This is an average of all valid hours within the 365 operating day period for Unit 2.

HI2 = total heat input over the 365 operating day period for Unit 2.

VII.B.1.b. Portland Cement Kilns and CENC and Clark Boilers: At all times after the compliance deadline specified in Regulation Number 3, Part F, Section VI.A.3., or VI.B.3., the owner/operator of each BART or RP unit shall maintain, calibrate and operate a CEMS in full compliance with the requirements in 40 CFR Part 60 Section 60.13 and Part 60 Appendices A, B and F to accurately measure SO2, NOX and diluents, if diluent is required. The CEMS shall be used to determine compliance with the SO2 and NOX Regional Haze emission limits for each such unit. For particular units, such limits are expressed in units of pounds per hour, tons per year, pounds per ton clinker or pounds per million Btu. The owner/operator shall calculate emissions in the applicable units. In determining compliance with the SO2 and NOX Regional Haze limits, all periods of emissions shall be included, including startups, shutdowns, emergencies and malfunctions.

VII.B.1.b.(i). Pounds per Hour and Tons per Year Regional Haze Limits and Pounds per Million Btu Regional Haze Limits.

For any hour in which fuel is combusted in the BART or RP unit, the owner/operator shall calculate hourly NO<sub>x</sub> and SO<sub>2</sub> emissions in the appropriate units (lbs/hr) or (lbs/MMBtu) in accordance with the provisions in 40 CFR Part 60. These hourly values shall be used to determine compliance in accordance with the particular limits averaging time, as follows:

VII.B.1.b.(i).(1). Pounds per Hour or Pounds per Million Btu Regional Haze Limits on a 30-day rolling average. Before the end of each operating day, the owner/operator shall calculate and record the 30-day rolling average emission rate in lb/MMBtu or lb/hr from all valid hourly emission values from the CEMS for the previous 30 operating days.

VII.B.1.b.i.(2). Pounds per Hour on a 12-month rolling average. Before the end of each month, the owner/operator shall calculate and record the 12-month rolling average emission rate in lb/hr from all valid hourly emission values from the CEMS for the previous 12 months.

VII.B.1.b.i.(3). Tons per year Regional Haze Limits on a 12-month rolling average. Before the end of each month, the owner/operator shall calculate and record the total emissions in tons/yr from all valid hourly emission values from the CEMS for the previous 12 months.

VII.B.1.b.(ii). 30-Day Rolling Average Pounds per Ton Clinker Regional Haze Limits. Hourly clinker production shall be determined in accordance with the requirements in 40 CFR Part 60 Subpart F Section 60.63(b). An operating day includes all valid data obtained in any daily 24-hour period during which the kiln operates and excludes any measurements made during the daily 24-hour period when the kiln was not operating. The 30-day rolling average emission rate of NO<sub>x</sub> and SO<sub>x</sub> shall be calculated and recorded as the total of all hourly emissions data for a cement kiln in the preceding 30 operating days, divided by the total tons of clinker produced in that kiln during the same 30-day operating period in accordance with the equation in 40 CFR Part 60 Subpart F Section 60.64(c).

VII.B.1.b.(iii). CENC Units 4 and 5 NO<sub>x</sub> Regional Haze limits:

For any hour in which fuel is combusted in CENC Unit 4 or Unit 5, the owner/operator shall calculate hourly NO<sub>x</sub> emissions in the appropriate units (lbs/MMBtu) in accordance with the provisions in 40 CFR Part 60. These hourly values shall be used to determine compliance with the Regional Haze limits, as follows:

VII.B.1.b.(iii).(1). Individual unit pound per Million Btu on a 30-day rolling average Regional Haze Limit: Before the end of each operating day, the owner/operator shall calculate and record the 30-day rolling average emission rate in lb/MMBtu from all valid hourly emission values from the CEMS for the previous 30 operating days, OR

VII.B.1.b.(iii).(2). Combined units 4 and 5 lbs/MMBtu 30-day rolling average Regional Haze Limit: Before the end of each operating day, the owner/operator shall calculate and record a 30-day

rolling average using data from the previous 30 operating days in accordance with the following equation:

$$\text{Average ER} = [(ER4)(HI4)+(ER5)(HI5)] / [(HI4)+(HI5)]$$

Where:

ER4 = average NOX emission rate, in pounds per MMBtu over the 30 day period. This is an average of all valid hours within the 30 operating day period for Unit 4.

ER5 = average NOX emission rate, in pounds per MMBtu over the 30 day period. This is an average of all valid hours within the 30 operating day period for Unit 5.

HI4 = Total heat input over the 30 operating day period for Unit 4.

HI5 = Total heat input over the 30 operating day period for Unit 5.

VII.B.1.b.(iii).(3). The owner or operator shall indicate in the excess emission reports required by Section VII.E of this Part F, which compliance demonstration method has been followed for the reporting period.

#### VII.B.2. BART and RP Units without NOX and SO2 CEMS.

VII.B.2.a. CENC Unit 3. Compliance with the SO2 limitations shall be determined by sampling and analyzing each shipment of coal for the sulfur and heat content using the appropriate ASTM Methods. In lieu of sampling, vendor receipts may be used provided the sampling and analysis was conducted in accordance with the appropriate ASTM Method. Each sample or vendor receipt must indicate compliance with the SO2 limitation. Compliance with the annual NOx limits shall be monitored by recording fuel consumption and calculating emissions monthly using the appropriate AP-42 emission factor. Monthly emissions shall be calculated by the end of the subsequent month and shall be used in a rolling twelve month total to monitor compliance with the annual limitations. Each month a new twelve month total shall be calculated using the previous 12 months data. [\*Note: CENC Unit 3 is not subject to annual SO2 limits.]

VII.B.2.b. CEMEX Dryer. Unless performance tests were completed within the previous 6 months, within 60 days of the compliance deadline specified in Regulation Number3, Part F Section VI.A.3, the owner/operator shall conduct a stack test to measure NOX and SO2 emissions in accordance with the appropriate EPA test methods. Frequency of testing thereafter shall be every five years. Each test shall consist of three test runs, with each run at least 60 minutes in duration.

In addition to the stack tests described above, compliance with the annual NOx and SO2 limits shall be monitored by calculating emissions monthly using the emission factors (in lb/hr) determined from the most recent Division-approved stack test and hours of operation for the month. Monthly emissions shall be calculated by the end of the subsequent month and used in a twelve month rolling total to monitor compliance with the annual limitations. Each month a new twelve month total shall be calculated using the previous 12 months' data.

## VII.C. Monitoring/Compliance Determination: Particulate Regional Haze Limits

### VII.C.1. Particulate Regional Haze Limits for all boilers except CENC and Clark boilers

Unless particulate compliance testing was completed within the previous 6 months, within 60 days of the compliance deadline specified in Regulation Number 3, Part F, Section VI.A.3., VI.B.3., or VI.C.3., the owner/operator shall conduct a stack test to measure particulate emissions in accordance with the requirements and procedures set forth in EPA Test Method 5 as set forth in 40 CFR Part 60, Appendix A. Stack testing for particulate matter shall be performed annually, except that: (1) if any test results indicate emissions are less than or equal to 50% of the emission limit, another test is required within five years; (2) if any test results indicate emissions are more than 50%, but less than or equal to 75% of the emission limit, another test is required within three years; and (3) if any test results indicate emissions are greater than 75% of the emission limit, an annual test is required until the provisions of (1) or (2) are met. A test run shall consist of three test runs, with each run at least 120 minutes in duration. Test results shall be converted to the applicable units and compliance will be based on the average of the three test runs.

In addition, to the stack tests described above, the owner/operator shall monitor compliance with the particulate matter limits in accordance with the applicable compliance assurance monitoring plan developed and approved in accordance with 40 CFR Part 64.

### VII.C.2. Portland Cement Plant Particulate Regional Haze Limits.

VII.C.2.a. Kilns. Compliance with the particulate matter limitations shall be monitored using a PM CEMS that meets the requirements in 40 CFR Part 63 Subpart LLL. The owner or operator shall calculate emissions in the applicable units. If a PM CEMS is used to monitor compliance with the PM limits, the opacity limits specified in this Part F do not apply.

In the event that the provisions in 40 CFR Part 63 Subpart LLL are revised, stayed or vacated, such that a PM CEMS is not required, compliance with the PM limitations shall be monitored by conducting stack tests in accordance with the requirements of Section VII.C.3. except that the results of the test shall be converted to the appropriate units (lb/ton clinker or lb/ton dry feed) and compliance will be based on the average of three test runs.

In addition, if no PM CEMS is required, as discussed in the above paragraph, the opacity limits specified in this Part F do apply. In order to monitor compliance with the opacity limit, the owner or operator shall install, calibrate, maintain, and continuously operate a COM located at the outlet of the PM control device to continuously monitor opacity. The COM shall be installed, maintained, calibrated, and operated as required by 40 CFR Part 63, Subpart A, and according to PS-1 of 40 CFR Part 60, Appendix B

VII.C.2.b. Dryers. Performance tests shall be conducted in accordance with the requirements in Section VII.C.3. Opacity monitoring shall be conducted in accordance with the requirements in 40 CFR Part 63 Subpart LLL.

VII.C.3. Particulate Regional Haze Limits for the CENC and Clark boilers and the CEMEX dryer. Within 60 days of the compliance deadline specified in Regulation Number 3, Part F, Section VI.A.3. or VI.B.3., the owner/operator shall conduct a stack test to measure particulate emissions in accordance with the requirements and procedures set forth in EPA Test Method 5, 5B, 5D or 17, as appropriate, as set forth in 40 CFR Part 60, Appendix A. Stack testing for particulate matter shall be performed annually, except that: (1) if any test results indicate emissions are less than or equal to 50% of the emission limit, another test is required within five years; (2) if any test results indicate emissions



are more than 50%, but less than or equal to 75% of the emission limit, another test is required within three years; and (3) if any test results indicate emissions are greater than 75% of the emission limit, an annual test is required until the provisions of (1) or (2) are met. Each test shall consist of three test runs, with each run at least 60 minutes in duration.

In addition, to the stack tests described above, compliance with the annual limitations (ton/yr limits) applicable to the Clark boilers and CEMEX dryer shall be monitored by calculating emissions monthly using the emission factors (in lb/hr) determined from the most recent Division-approved stack test and hours of operation for the month. Monthly emissions shall be calculated by the end of the subsequent month and used in a twelve month rolling total to monitor compliance with the annual limitations. Each month a new twelve month total shall be calculated using the previous 12 months' data.

In addition to the stack tests described above, the owner/operator shall monitor compliance with the particulate matter limits in accordance with the applicable compliance assurance monitoring plan developed and approved in accordance with 40 CFR Part 64.

#### VII.D. Recordkeeping

Owner/operator shall maintain the following records for at least five years:

VII.D.1. All CEMS data as required in the applicable regulation, stack test data, and data collected pursuant to the CAM plan, including the date, place, and time of sampling, measurement, or testing; parameters sampled, measured, or tested and results; the company, entity, or person that performed the testing, if applicable; and any field data sheets from testing.

VII.D.2. Records of quality assurance and quality control activities for emissions measuring systems including, but not limited to, any records required by 40 CFR Part 60, 63, or 75.

VII.D.3. Any other records required by 40 CFR parts 60, Subpart F, Section 60.65, 63, Subpart LLL, 64 or 75.

#### VII.E. Reporting requirements

The owner/operator of a BART, RP or BART alternative program unit shall submit semi-annual excess emissions reports no later than the 30th day following the end of each semi-annual period unless more frequent reporting is required. Excess emissions means emissions that exceed the Regional Haze emissions limits. Excess emission reports shall include the information specified in 40 CFR Part 60, Section 60.7(c).

The owner/operator of a BART, RP or BART alternative program unit shall submit reports of any required performance stack tests for particulate matter, to the Division within 60 calendar days after completion of the test.

The owner/operator shall also submit semi-annual reports of any excursions under the approved compliance assurance monitoring plan in accordance with the schedule specified in the source's Title V permit.

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## **PART G STATEMENTS OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE**

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**I.YY. Adopted November 20, 2014**

Regulation Number 3, Part F – revising the NO<sub>x</sub> emission limit, compliance date and BART determination for Tri-State Generation and Transmission Association (“Tri-State”), Craig Station Unit 1.

This Statement of Basis, Specific Statutory Authority, and Purpose complies with the requirements of the Colorado Administrative Procedures Act, C.R.S. § 24-4-103, the Colorado Air Pollution Prevention and Control Act, C.R.S. §§ 25-7-110 and 25-7-110.5, and the Air Quality Control Commission’s (“Commission”) Procedural Rules.

Specific Statutory Authority

The Colorado Air Pollution Prevention and Control Act, C.R.S. § 25-7-105(1) directs the Commission to promulgate such rules and regulations as are consistent with the legislative declaration set forth in Section 25-7-102 and are necessary for the proper implementation and administration of Article 7, including a comprehensive state implementation plan which will prevent significant deterioration of air quality. Section 25-7-109(1)(a) authorizes the Commission to require the use of air pollution controls. Section 109(2) authorizes the Commission to adopt emission control regulations pertaining to visible pollutants and nitrogen oxides.

Basis and Purpose

The Colorado Air Quality Control Commission (“Commission”) revises Regulation Number 3, Part F, Section VI., containing the Regional Haze Best Available Retrofit Technology (“BART”) determinations that the Commission adopted and the EPA approved as part of Colorado’s Regional Haze State Implementation Plan (“SIP”).

After EPA approved Colorado’s Regional Haze SIP, WildEarth Guardians and the National Parks Conservation Association challenged portions of this approval by filing suit against EPA in the Tenth Circuit. As part of this lawsuit, the plaintiffs contested the nitrogen oxides (“NO<sub>x</sub>”) provisions for Craig Station Unit 1. In furtherance of settlement of this litigation, the Commission has revised Regulation Number 3, Part F, Section IV. to strengthen the NO<sub>x</sub> emission limit and set the compliance deadline for Craig Station Unit 1. The Commission revised Craig Station Unit 1’s BART determination for NO<sub>x</sub> by revising the NO<sub>x</sub> emission limit from 0.28 lb/MMBtu to 0.07 lb/MMBtu, and revising the associated compliance deadline from December 31, 2017 to August 31, 2021. The Commission also clarified that compliance with the specified emission limits and compliance dates for both Units 1 and 2 constitute BART for this facility.

In addition to the regulatory changes described above, the Division proposes to make corresponding changes to Colorado’s Regional Haze SIP: Chapter 6 - Best Available Retrofit Technology; Chapter 9 – Long Term Strategy; and Appendix C – Technical Support for the BART Determinations. The revisions to the Regional Haze SIP do not impact the emission limits or compliance deadline for Craig Station Unit 2. The revised chapters fully replace previously adopted SIP chapters.

The revisions also correct typographical, grammatical, and formatting errors.

Additional Considerations

Colorado’s Regional Haze SIP revisions are consistent with EPA’s federal requirements under the Regional Haze rule. Accordingly, the revisions do not exceed the requirements of the federal act or differ from the federal act or rules. However, to the extent that these revisions could be viewed as exceeding or differing from the federal act, the Commission determines in accordance with C.R.S. §§ 25-7-110.5(5)(b):

- (I) Colorado’s Regional Haze SIP was drafted in accordance with EPA’s Regional Haze Rule. The Regional Haze Rule provides states flexibility in how states may consider the

federal statutory and regulatory factors when determining BART and reasonable progress goals.

- (II) EPA's regional haze requirements are performance based. The Regional Haze Rule sets forth factors the states must consider when determining BART for sources reasonably anticipated to cause or contribute to the impairment of visibility in federal Class I areas. States have the discretion to select the appropriate controls for such sources.
- (III) EPA's Regional Haze Rule guides how states must determine BART for their BART-eligible sources. However, state discretion is a cornerstone of the Regional Haze Rule (70 FR 39137). Colorado considered Colorado's issues of concern when developing these revisions.
- (IV) The adopted revisions will improve Tri-State's ability to comply with the goals of the Regional Haze Rule while preventing or reducing the need for costly retrofits potentially required in Colorado's next reasonable progress planning period.
- (V) The Regional Haze Rule requires source to comply with the BART determinations as expeditiously as possible but no later than five years after EPA approves the SIP. Concerning this revision, the Division must submit a proposed SIP revision to EPA no later than July 31, 2015, and EPA must take final action on the proposed SIP revision by December 31, 2016. The revised compliance deadline for Craig Station Unit 1 of August 31, 2021, is slightly less than five years after EPA's approval, which is within the time frame for implementation set by the Regional Haze Rule.
- (VI) The adopted rule will assist in establishing and maintaining a reasonable margin for accommodation of uncertainty and future growth.
- (VII) The adopted rule establishes reasonable equity for sources because the Regional Haze Rule applies the same standards for determining BART to all BART-eligible sources. BART determinations are source specific and different controls and emission limits are to be expected.
- (VIII) If the revisions were not adopted, litigation would continue concerning the regional haze requirements for Craig Station that would entail associated costs and uncertainties as to the outcome.
- (IX) These revisions do not modify the currently approved procedural, reporting, or monitoring requirements in Colorado's Regional Haze SIP.
- (X) Demonstrated technology is available to comply with the revised NOx emission rate for Craig Station Unit 1.
- (XI) The revisions will contribute to further reductions of NOx emissions and therefore contribute to the prevention of pollution.
- (XII) Neither an alternative rule nor a no action alternative would address or achieve the emission reductions to be achieved through these revisions. Further, failure to adopt the revisions could result in further expensive and time consuming litigation concerning Colorado's regional haze provisions for Craig Station Unit 1.

As part of adopting the revisions to Regulation Number 3, Part F, Section VI., the Commission has taken into consideration each of the factors set forth in C.R.S. § 25-7-109(1)(b).

To the extent that C.R.S. § 25-7-110.8 requirements apply to this rulemaking, and after considering all the information in the record, the Commission hereby makes the determination that:

- (I) These rules are based upon reasonably available, validated, reviewed, and sound scientific methodologies, and the Commission has considered all information submitted by interested parties.
- (II) Evidence in the record supports the finding that the rules shall result in a demonstrable reduction of NOx emissions.
- (III) Evidence in the record supports the finding that the rules shall bring about reductions in risks to human health and the environment that justify the costs to implement and comply with the rules.
- (IV) The rules are the most cost-effective to achieve the necessary reduction in air pollution and provide the regulated entity flexibility.

The selected regulatory alternative will maximize the air quality benefits of regulation in the most cost-effective manner.



# COLORADO

## Air Quality Control Commission

Department of Public Health & Environment

### NOTICE OF RULEMAKING HEARING

Regarding proposed revisions to:

#### **Regulation Number 3 and the Regional Haze State Implementation Plan**

#### **SUBJECT:**

The Air Quality Control Commission will hold a rulemaking hearing to consider proposed revisions to Regulation 3, Part F, Section VI containing the nitrogen oxides ("NOx") emission limit and compliance deadline for Tri-State's Craig Station Unit 1. Based on a recent settlement agreement entered into on July 9, 2014, the regulatory NOx emission limit is proposed to be reduced from 0.28 lb/MMBtu to 0.07 lb/MMBtu, and the associated compliance deadline extended from January 30, 2018 to August 31, 2021. The proposal also amends the Best Available Retrofit Technology ("BART") determination for Craig Station Unit 1, finding that the proposed emission limit and compliance deadline constitute BART for this facility.

#### **HEARING SCHEDULE:**

DATE: November 20, 2014  
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:**

The Commission encourages all interested persons to provide their views either orally at the hearing or 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. **Public testimony will be taken on November 20, 2014.**

Written and/or electronic submissions are requested, but not required to be submitted prior to the hearing to allow review prior to presentation at the hearing. Written and/or electronic submissions should be received in the Commission Office at least 14 days prior to the hearing.

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.

4300 Cherry Creek Drive South, EDO-AQCC-A5, Denver, CO 80246-1530 P 303-692-3476

[www.colorado.gov/pacific/cdphe/aqcc](http://www.colorado.gov/pacific/cdphe/aqcc)

John W. Hickenlooper, Governor | Larry Wolk, MD, MSPH, Executive Director and Chief Medical Officer

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](mailto:cdphe.aqcc-comments@state.co.us)

### **PARTY STATUS:**

Any person may obtain party status for the purpose of this hearing by complying with the requirements of the Commission's Procedural Rules. A petition for party status must be filed by electronic mail with the Office of the Air Quality Control Commission no later than close of business on **September 16, 2014**. The petition must: *1) identify the applicant; 2) provide the name, address, telephone and facsimile numbers, and email address of the applicants representative; and 3) briefly summarize what, if any, policy, factual, and legal issues the applicant has with the proposal(s) as of the time of filing the application.* Electronically mailed copies must also be received, by this same date, by the Division staff person and the Assistant Attorneys General representing the Division and the Commission identified below.

Individuals may also obtain party status by submitting an alternative to the proposed rule. The submittal of an alternative proposal must be accompanied by an electronic copy of the alternative proposed rule and all other associated documents as required by the Commission's Procedural Rules, and must be filed by electronic mail with the Office of the Commission by **close of business October 14, 2014**. Alternative rules must also be filed by electronic mail with the Division staff person and with each of the Assistant Attorneys General.

Theresa L. Martin  
Air Quality Control Commission  
4300 Cherry Creek Drive South, EDO-AQCC-A5  
Denver, CO 80246  
[Theresa.Martin@state.co.us](mailto:Theresa.Martin@state.co.us)

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Leah Martland  
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Denver, CO 80203  
[Robyn.Wille@state.co.us](mailto:Robyn.Wille@state.co.us)

Requests received beyond the stated deadline shall only be considered upon a written motion for good cause shown. The Commission reserves the right to deny party status to anyone that does not comply with the Commission's Procedural Rules.



### **STATUS CONFERENCE:**

A status conference will be held **September 23, 2014 at 9:00 a.m.**, at the Department of Public Health and Environment, Sabin-Cleere Conference Room to ascertain and discuss the issues involved, and to ensure that parties are making all necessary efforts to discuss and resolve such issues prior to the submission of prehearing statements. Attendance at this status conference is mandatory for anyone who has requested party status.

### **PREHEARING CONFERENCE/PREHEARING STATEMENTS:**

Attendance at the prehearing conference is mandatory for all parties to this hearing. A prehearing conference will be held **October 23, 2014 at 3:30 p.m.** at the Department of Public Health and Environment, Sabin-Cleere Conference Room. All parties must submit by electronic mail a prehearing statement to the Commission Office by close of business **October 14, 2014**. In addition, any exhibits to the prehearing statements or alternative proposals must be submitted in a separate electronic transmission to the Commission Office by close of business **October 14, 2014**. Electronically mailed copies of these documents must be delivered by that date to all persons who have been granted party status and to the Division point of contact and each of the Assistant Attorneys General identified above by close of business **October 14, 2014**. Rebuttals to the prehearing statement may be submitted to the Commission Office and all other parties by close of business **October 30, 2014**.

### **EXCEPTIONS TO FILE DOCUMENTS BY ELECTRONIC MAIL:**

The Commission's Procedural Rules provide for an exception to file documents by electronic mail. Any person may petition the Commission to file documents in paper copy format if they are unable for any reason to comply with the requirements of the Commission's Procedural Rules. If granted an exception to electronic filing pursuant to the provisions of Subsection III.I.3. of the Commission's Procedural Rules, the applicant for party status shall file an original and fifteen copies in the Office of the Air Quality Control Commission, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado 80246., and shall also deliver copies to each party, the Assistant Attorneys General representing the Commission and Division, and the Division staff person for the proceedings by electronic mail or as otherwise provided by the exception granted under Subsection III.I.3.

### **STATUTORY AUTHORITY FOR THE COMMISSION'S ACTIONS:**

The Colorado Air Pollution Prevention and Control Act, C.R.S. Section 25-7-105(1) directs the Commission to promulgate such rules and regulations as are consistent with the legislative declaration set forth in Section 25-7-102 and are necessary for the proper implementation and administration of Article 7, including a comprehensive state implementation plan which will prevent significant deterioration of air quality. Section 25-7-109(1)(a) authorizes the Commission to require the use of air pollution controls.

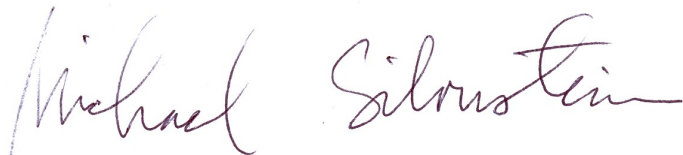


Section 25-7-109(2) authorizes the Commission to adopt emission control regulations pertaining to visible pollutants and nitrogen oxides.

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 25<sup>th</sup> day of August 2014 at Denver, Colorado

Colorado Air Quality Control Commission

A handwritten signature in dark ink, reading "Michael Silverstein". The signature is written in a cursive, flowing style. The first name "Michael" is written with a large, prominent "M" and a trailing flourish. The last name "Silverstein" is written in a similar cursive style, with the "S" being particularly large and the "n" ending in a small loop.

Michael Silverstein, Administrator

# Notice of Rulemaking Hearing

**Tracking number**

2014-00921

**Department**

1000 - Department of Public Health and Environment

**Agency**

1005 - Laboratory Services Division - Rules promulgated by the Colorado Board of Health

**CCR number**

5 CCR 1005-1

**Rule title**

ENVIRONMENTAL LABORATORY ACCREDITATION

## Rulemaking Hearing

**Date**

10/15/2014

**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**

Consider the promulgation of 5 CCR 1005-1 Environmental Laboratory Certification.

**Statutory authority**

Section § 25-1.5-101(1)(e), C.R.S.

## Contact information

**Name**

Jeff Groff

**Title**

EBAT Supervisor

**Telephone**

303-692-3681

**Email**

jeff.groff@state.co.us



COLORADO

Department of Public  
Health & Environment

Dedicated to protecting and improving the health and environment of the people  
of Colorado

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To: Members of the State Board of Health

From: Jeff Groff, Laboratory Certification Program Manager, Lab Services Division

Through: Dr. Laura Gillim-Ross, LSD Director – LGT

Date: July 31, 2014

Subject: **Request for Rulemaking Hearing**  
Proposed Amendments to 5CCR 1005-1 Environmental Laboratory Certification  
with a request for the rulemaking hearing to occur on October 15, 2014

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Dear State Board of Health Members,

The Department is recommending updates to the current State Board of Health Rule 5 CCR 1005-1 Environmental Laboratory Certification be made. The proposed recommendations are to update the statutory references, provide clarification to the laboratory certification process and to ensure that the laboratory standards referenced are consistent with those being used to determine compliance.

The recommended changes do not pose any source of controversy, nor will they have financial impact upon the environmental laboratories.

Thank you for your consideration.

Jeff Groff - JAG  
Laboratory Certification Program Manager  
Laboratory Services Division  
CDPHE



**STATEMENT OF BASIS AND PURPOSE  
AND SPECIFIC STATUTORY AUTHORITY  
for**

**Amendments to 5CCR 1005-1 Environmental Laboratory Certification**

**Basis and Purpose.**

Under Section § 25-1.5-101(1)(e), C.R.S., the Board of Health has the authority to promulgate these rules concerning the certification of environmental laboratories that perform testing on finished drinking water samples for compliance monitoring by the Department's Water Quality Control Division. Testing of drinking water samples is performed in accordance with the 5 CCR 1002-11, Colorado Primary Drinking Water Regulations, Articles 1 and 1.5 of Title 25, Colorado Revised Statutes (C.R.S.), and Federal Environmental Protection Agency (EPA) Safe Drinking Water Act (SDWA) under 42 U.S.C. 300f, et seq. (Public Law 93-523).

The Colorado Department of Public Health and Environment evaluates laboratories performing testing using the "Manual for the Certification of Laboratories Analyzing Drinking Water" Fifth Edition, (EPA 815-R-05-004, January 2005), Supplement 1 (EPA 815-F-08-006, June 2008) and Supplement 2 (EPA 815-F-12-006, November 2012).

- Through the State Board of Health rules, the following are governed:
- The inspection of environmental laboratories testing finished drinking water samples originating within the state of Colorado that are then reported for compliance purposes.
  - The certification of environmental laboratories meeting the aforementioned standards in the categories of Chemistry, Microbiology and Radiochemistry.

These rules establish minimum standards for certification of environmental laboratories and processes utilized for testing and reporting of finished drinking water samples originating within Colorado.

- The purposes for revisions to 5 CCR 1005-1 are as follows:
- To update the existing state and federal statutory references.
  - To provide clarification to existing language regarding the use of accreditation vs. certification.
  - To clarify the process for offering reciprocity to environmental laboratories outside of Colorado who have been accredited/certified by the state agency authority where the laboratory resides.

**Specific Statutory Authority.**

These rules are promulgated pursuant to the following statute: § 25-1.5-101(1)(e), C.R.S.,

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**SUPPLEMENTAL QUESTIONS**

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92 **Is this rulemaking due to a change in state statute?**

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94 \_\_\_\_\_ Yes, the bill number is \_\_\_\_\_; rules are \_\_\_\_ authorized \_\_\_\_ required.

95 \_\_\_ **X** \_\_\_ No

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97 **Is this rulemaking due to a federal statutory or regulatory change?**

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99 \_\_\_ **X** \_\_\_ Yes

100 \_\_\_\_\_ No

101 **Does this rule incorporate materials by reference?**

102

103 \_\_\_ **X** \_\_\_ Yes

104 \_\_\_\_\_ No

105 **Does this rule create or modify fines or fees?**

106 \_\_\_\_\_ Yes

107 \_\_\_ **X** \_\_\_ No

## REGULATORY ANALYSIS

for

### Amendments to 5CCR 1005-1 Environmental Laboratory Certification

**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.**

- a. Environmental Laboratories who wish to engage in the testing of finished drinking water samples originating from the state of Colorado for compliance reporting purposes.
- b. The Colorado Department of Public Health and Environment (CDPHE) Water Quality Control Division (WQCD).
- c. Colorado residents who obtain finished drinking water used for consumption that originates from water suppliers within the state.

**To the extent practicable, a description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.**

#### Quantitative Impact:

The proposed changes to the rules do not expand requirements; the proposed changes are technical in nature to ensure alignment current practice. There is no financial impact to stakeholders.

#### Qualitative Impact:

The proposed changes will strengthen and clarify the current requirements specified in the rules by removing inconsistent or outdated statutory references. Indirect benefits to the environmental laboratories seeking certification through reciprocity will limit unnecessary regulatory inspection and costs.

**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.**

There are no identified costs anticipated to the Department or any other regulated environmental laboratory by implementing these rules and regulations as amended.

**A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.**

The costs and benefits of the proposed rules:

- Improved accuracy of the statutory references.
- Increased efficiency of the laboratory certification process by better defining the reciprocity process.
- Updated references for the laboratory standards by which the labs are evaluated.

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The costs and benefits of inaction to the proposed rules:

- Continued confusion by the environmental labs as to the standards by which they are held.
- Continued confusion by the environmental labs as to the requirements to receive certification through reciprocity.
- Inaccuracy of the statutory references.

**A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.**

No financial impact is identified in the proposed rule revisions.

**Alternative Rules or Alternatives to Rulemaking Considered and Why Rejected.**

The Department has identified the need for revisions to the current rules to clarify existing language, update statutory references and to better clarify certification requirements for environmental laboratories.

**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.**

N/A



**STAKEHOLDER Comment  
for**

**Amendments to 5CCR 1005-1 Environmental Laboratory Certification**

The following individuals and/or entities were included in the development of these proposed rules:

- Certified Environmental Laboratories – Pending notification
- CDPHE Water Quality Control Division – Pending notification

The following individuals and/or entities were notified that this rule-making was proposed for consideration by the Board of Health:

- Certified Environmental Laboratories – Pending notification
- CDPHE Water Quality Control Division – Pending notification

On or before the date of publication of the notice in the Colorado Register, the Division sent notice to persons and/or groups considered by the division to be interested parties to the proposed rule-making, and those who have requested notification/ information from the division regarding the proposed rule-making? \_\_\_\_ Yes \_\_\_\_ No. The Division provided notice on \_NA.

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.

None identified at this time.

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?

None identified at this time.

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## 226DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

### 227Laboratory Services Division

## 228ENVIRONMENTAL LABORATORY CERTIFICATION

### 2295 CCR 1005-1

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

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#### 2341.1 Purpose and Scope.

235The rules and regulations establish the minimum standards for environmental laboratories wishing  
236~~accreditation certification~~ to test samples under the Colorado Primary Drinking Water Regulations, and  
237federal Safe Drinking Water Act (SDWA). ~~Accreditation-Certification~~ of laboratories is granted  
238independently for each of the following testing areas: chemistry, microbiology, and radiochemistry. Under  
239the Colorado Revised Statutes, Section 25-1.5-1017(~~et~~)(~~eh~~), ~~C.R.S. and Section 25-1-107(l)(x.5)(l)~~,  
240~~C.R.S.~~, laboratory approval and certification is delegated to the Department.

241Through the rules and regulations, the Department affords laboratories ~~accreditation certification~~ for state  
242requirements, federal requirements and interstate recognition (reciprocity) by adopting the SDWA  
243standards in their entirety. The rules and regulations provide for reliable, accurate, and comparable  
244laboratory data for public and environmental health monitoring and safety decisions.

#### 2451.2 Definitions.

246“~~Accreditation~~Certification” means official Department approval of a laboratory meeting SDWA standards.  
247~~For the purposes of the rule and regulation “accreditation” is interchangeable with the term “certification”.~~  
248Evidence of ~~accreditation certification~~ will be a document stating; the laboratory is accredited certified by  
249the Department in one or more of the following testing areas: chemistry, microbiology, and/or  
250radiochemistry.

251“~~Accrediting-Certifying~~ Authority” means the Territorial, State or Federal agency having responsibility and  
252accountability for environmental laboratory ~~accreditation certification~~.

253“Colorado Primary Drinking Water Regulations” means the Colorado Code of Regulations 5 CCR 1003-1  
254promulgated by the State Board of Health, pursuant to Part I of Title 25, Colorado Revised Statutes  
255(C.R.S.), 1973.

256“Department” means the Colorado Department of Public Health and Environment, Laboratory ~~and~~  
257~~Radiation~~ Services Division.

258“Laboratory Method” means an approved and defined technical procedure for performing a test.

259“Primary ~~accreditation~~certification” means approval of a laboratory based directly on Department  
260~~accreditation~~certification authority and inspection processes.

261“Proficiency ~~T~~testing” means the determination of laboratory performance by evaluation of analytical  
262results on an inter-laboratory comparison sample from an approved provider.

263“Reciprocity ~~accreditation~~Certification” means approval of a laboratory based on another ~~accrediting~~  
264~~certification/accreditation~~ authority’s findings.

265“Safe Drinking Water Act (SDWA)” means the enabling legislation under 42 U.S.C. 300f et seq. (Public  
266Law 93-523) that requires EPA to protect the quality of drinking water by setting maximum allowable  
267contaminant levels, monitor, and bring enforcement action for noncompliance.

268“United States Environmental Protection Agency (EPA)” means the federal agency with responsibility for  
269the protection of public health and for safeguarding and improving the natural environment upon which  
270human life depends.

### 271**1.3 Accreditation-Certification of Environmental Laboratories**

272**1.3.1** All environmental laboratories certified under the rules and regulations will meet:

273 **1.3.1.1** SDWA standards specified in the United States Environmental Protection Agency (EPA)  
274 “Manual for the Certification of Laboratories Analyzing ~~D~~Prinking Water” ~~Fourth-Fifth~~ Edition, EPA  
275 815-R-05-004, January 2005, and supplement 1 (EPA 815-F-08-006, June 2008) and supplement  
276 2 (EPA 815-F-12-006, November 2012)~~March 1997 and errata of May, 1999, published by the~~  
277 ~~Office of Ground Water and Drinking Water, Cincinnati, OH, 45268.~~

278 **1.3.1.2** ~~Certified copies of the r~~RReferenced materials are available for public inspections during  
279 normal business hours at the Laboratory ~~and Radiation~~ Services Division (~~LARS~~LSD), 8100  
280 Lowry Blvd., Denver, CO 80230 and at the Colorado Department of Public Health and  
281 Environment, 4300 Cherry Creek Drive South, Denver, Colorado 80222-1530. Certified copies of  
282 the referenced material will be provided at cost upon written request to the ~~LARS~~LSD Director at  
283 the Lowry address. Later amendments or editions to these standards are not included.

284**1.3.2** Each laboratory wishing to obtain ~~accreditation~~certification shall apply to the Department.

285**1.3.3** Application for ~~accreditation~~certification shall be completed on forms furnished by the Department  
286and shall contain all the information required by the form and any accompanying instructions.

287**1.3.4** Reapplications shall be submitted annually, at least 90 days before expiration of existing  
288~~accreditation~~certification to assure continuous ~~accreditation~~certification.

289**1.3.5** Laboratories holding letters or certificates of approval on the effective date of these regulations will  
290remain certified until the expiration date of those approvals, unless voluntarily withdrawn, revoked,  
291suspended or limited before that expiration date.

292**1.3.6** Laboratory ~~accreditation~~certifications will be issued annually based on submission of complete and  
293acceptable application documents, and successful participation in proficiency test programs.

294**1.3.7** Laboratories may request primary or reciprocity ~~accreditation~~certification.

295 1.3.7.1 Primary [accreditationcertification](#) will be granted to laboratories requesting the  
296 Department to perform the onsite inspection required to determine compliance with applicable  
297 standards. Routine inspections will be announced at least five days before the inspection date.  
298 Complaint inspections may be unannounced.

299 1.3.7.2 Reciprocity [accreditationcertification](#) will be granted to laboratories requesting  
300 Department approval based on another [state agency](#) accrediting [or certifying](#) authority's approval  
301 and inspection process. [Reciprocity-accredited-laboratories granted certification based upon](#)  
302 [reciprocity must shall](#) maintain current [accreditationcertification](#) with another [state agency](#)  
303 accrediting [or certifying](#) authority and shall report any changes in status to the Department within  
304 30 calendar days of occurrence.

#### 305**1.4 Denial, Suspension. Limitation or Revocation of [AccreditationCertification](#).**

306The Department may deny, suspend, limit or revoke the [accreditationcertification](#) of a laboratory based  
307on:

308 1.4.1 "Criteria and Procedures for Downgrading/Revoking Certification Status" specified in the  
309 United States Environmental Protection Agency (EPA) "Manual for the Certification of  
310 Laboratories Analyzing Drinking Water", ~~Fourth~~ Fifth Edition, [EPA 815-R-05-004, January 2005.](#)  
311 [and supplement 1 \(EPA 815-F-08-006, June 2008\) and supplement 2 \(EPA 815-F-12-006,](#)  
312 [November 2012\).](#) ~~March 1997 and errata of May, 1999, published by the Office of Ground Water~~  
313 ~~and Drinking Water, Cincinnati, OH, 45268.~~

314 [1.4.2 Failure to comply with the certification requirements contained within this rule.](#)

#### 315**1.5 Notification of Violations, Hearings and Determinations.**

316All parties shall comply with the statutory requirements of the Administrative Procedures Act, Section 24-  
3174-105(7), C.R.S. Judicial review shall be in accordance with section 25-1-113, C.R.S.

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319**Editor's Notes**

320**History**



## COLORADO

### Board of Health

Department of Public Health & Environment

#### NOTICE OF PUBLIC RULE-MAKING HEARING BEFORE THE COLORADO BOARD OF HEALTH

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 October 15, 2014 at 10 a.m. in the Sabin-Cleere Conference Room of the Colorado Department of Public Health and Environment, Bldg. A, First Floor, 4300 Cherry Creek Drive, South, Denver, CO 80246, to consider the promulgation of 5 CCR 1005-1 Environmental Laboratory Certification. The proposed rules have been developed by the Laboratory Services Division of the Colorado Department of Public Health and Environment pursuant to Section § 25-1.5-101(1)(e), C.R.S.

The agenda for the meeting and the proposed amendments will also be available on the Board's website, [www.colorado.gov/cdphe/BoardOfHealth](http://www.colorado.gov/cdphe/BoardOfHealth) at least 7 days prior to the meeting. The proposed rules, together with the proposed statement of basis and purpose, specific statutory authority and regulatory analysis will be available for inspection at the Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South EDO-A5, Denver, Colorado 80246-1530 at least five working days prior to the hearing. Copies of the proposed rules may be obtained by contacting the Colorado Department of Public Health and Environment, Laboratory Services Division Laboratory Certification Program, 8100 Lowry Blvd., Denver, CO 80230 (303) 692-3045.

The Board encourages all interested persons to participate in the hearing by providing written data, views, or comments, or by making oral comments at the hearing. At the discretion of the Chair, oral testimony at the hearing may be limited to three minutes or less depending on the number of persons wishing to comment. Pursuant to 6 CCR 1014-8, §3.02.1, written testimony must be submitted no later than five (5) calendar days prior to the rulemaking hearing. Persons wishing to submit written comments should submit them to: Colorado Board of Health, ATTN: Jamie L. Thornton, Program Assistant, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South EDO-A5, Denver, Colorado 80246-1530 or by e-mail at: [Jamie.thornton@state.co.us](mailto:Jamie.thornton@state.co.us)

Dated this 27<sup>th</sup> day of August, 2014.

Deborah Nelson  
Board of Health Administrator

# Notice of Rulemaking Hearing

**Tracking number**

2014-00918

**Department**

1000 - Department of Public Health and Environment

**Agency**

1011 - Health Facilities and Emergency Medical Services Division (1011, 1015 Series) - by Colo Bd of Health

**CCR number**

6 CCR 1011-1 Chap 02

**Rule title**

STANDARDS FOR HOSPITALS AND HEALTH FACILITIES: CHAPTER 02 - GENERAL  
LICENSURE STANDARDS

## Rulemaking Hearing

**Date**

10/15/2014

**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**

The proposed amendment strikes section 5.2.3.4 regarding an exemption from copying fees for patient records when requested solely for continuing medical care because that language is now inconsistent with the recently revised Section 25-1-801, C.R.S.

**Statutory authority**

Sections 25-1.5-103 and 25-1-801, C.R.S.

## Contact information

**Name**

Laurie Schoder

**Title**

Policy Analyst

**Telephone**

303-692-2832

**Email**

[laurie.schoder@state.co.us](mailto:laurie.schoder@state.co.us)



Dedicated to protecting and improving the health and environment of the people of Colorado

To: Members of the State Board of Health

From: Laurie Schoder, Policy Analyst, Health Facilities and Emergency Medical Services Division

Through: D. Randy Kuykendall, MLS; Director **D.R.K.**

Date: August 20, 2014

Subject: Proposed Amendments to 6 CCR 1011-1, Standards for Hospitals and Health Facilities, Chapter II, General Licensure Standards, Part 5 Access to Patient Medical Records with a Request for the Rulemaking Hearing to occur on October 15, 2014

The Division is proposing an amendment to its rules regarding patient medical record copy costs in order to comply with House Bill 14-1186 and a directive from the Office of Legislative Legal Affairs.

In January of this year, the Board adopted changes to this section that consisted of striking language in section 5.2.3.4 regarding specific per page fees that licensed health facilities could charge patients or their representatives for copies of a patient's medical record. On the recommendation of the Division and the Office of the Attorney General, the Board struck the language regarding specific per page fees because the existing statute did not support the Board's authority to impose such fees.

At the time, the Division recommended keeping, but slightly rewording, existing language that no fees be charged by a health care provider for copies of patient records if those copies were being requested solely for the purpose of providing continuing medical care to a patient. The Division believed that this provision was necessary to protect the health, safety and welfare of patients in need of continuing medical care.

After the January 2014 amendments were adopted by the Board, the legislature enacted House Bill 14-1186 which added specific patient record copy cost fees to the statute. The bill also added statutory language that overrides the Division's rule regarding exemption from fees if the medical records being requested are for the sole purpose of continuing medical care. Specifically, the general assembly expressed their intent to establish in statute maximum reasonable fees that may be charged to third parties, which encompasses anyone other than the patient or the patient's personal representative. Additionally, the Office of Legislative Legal Services, in conducting their routine review of all newly adopted regulations, determined that the Board did not have the authority to adopt a rule that allowed an exemption from fees in certain circumstances because the statute specifies that health care facilities can charge the reasonable costs of responding to certain types of medical record requests such as for X-rays, mammograms, CT scans, MRIs or other film when "a copy is not sufficient for diagnostic or other treatment purposes."





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**STATEMENT OF BASIS AND PURPOSE  
AND SPECIFIC STATUTORY AUTHORITY**

For Rules Pertaining to the Standards for Hospitals and Health Facilities  
6 CCR 1011, Chapter II, General Licensure Standards, Part 5  
Access to Patient Medical Records

August 20, 2014

10 **Basis and Purpose:**

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12 House Bill 14-1186 added statutory language that overrides the Division's rule regarding exemption  
13 from fees if the medical records are being requested for the sole purpose of continuing medical care.  
14 Specifically, the general assembly expressed their intent to establish in statute maximum reasonable  
15 fees that may be charged to third parties, which encompasses anyone other than the patient or the  
16 patient's personal representative. Additionally, the Office of Legislative Legal Services, in conducting  
17 their routine review of all newly adopted regulations, determined that the Board did not have the  
18 authority to readopt one sentence of the January 2014 rule changes that allowed an exemption from  
19 fees in certain circumstances. Their opinion was based upon the fact that the statute specifies that  
20 health care facilities can charge the reasonable costs of responding to certain types of medical record  
21 requests such as for X-rays, mammograms, CT scans, MRIs or other film when "a copy is not  
22 sufficient for diagnostic or other treatment purposes."

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24 **These rules are promulgated pursuant to the following statutes:**

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26 Section 25-1.5-103, C.R.S. (2014)

27 Section 25-1-801, C.R.S. (2014).

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SUPPLEMENTAL QUESTIONS

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30 **Is this rulemaking due to a change in state statute?**

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32 ☒ Yes

33 ☐ No

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35 **Is this rulemaking due to a federal statutory or regulatory change?**

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37 ☐ Yes

38 ☒ No

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40 **Does this rule incorporate materials by reference?**

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42 ☐ Yes

43 ☒ No

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45 **Does this rule create or modify fines or fees?**

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☐ Yes



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**REGULATORY ANALYSIS**

For Rules Pertaining to the Standards for Hospitals and Health Facilities  
6 CCR 1011, Chapter II, General Licensure Standards, Part 5  
Access to Patient Medical Records  
August 20, 2014

91. **A description of the classes of persons who will be affected by the rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the rule.**

12  
13 The classes of persons who will be primarily affected by the proposed amendment are health  
14 care providers who request copies of patient medical records solely for the purpose of  
15 providing continuing treatment to that patient.

172. **To the extent practicable, a description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected class of persons.**

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19  
20 The probable quantitative and qualitative impact of the proposed amendment is impossible to  
21 determine at this time.

233. **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.**

24  
25  
26 The Division does not anticipate any significant additional costs will be incurred by it or any  
27 other agency with the exception of any state owned or operated health care providers that will  
28 now be required to pay for copies of patient medical records that are deemed necessary for  
29 continuing treatment of a patient.

314. **A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.**

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34 Inaction is not an option as it would result in violation of newly adopted statutory language.

365. **A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.**

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39 The determination is that there is no less costly or less intrusive method for achieving the  
40 purpose of the amendment that strikes rule language that is contrary to the newly adopted  
41 statutory language.

436. **A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule.**

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No other alternatives are appropriate at this time since the proposed amendment is necessary to strike a rule provision that is contrary to the newly adopted statutory language regarding patient record copy costs.

**To the extent practicable, a quantification of the data used in the analysis; the analysis must take into account both short-term and long-term consequences.**

The short-term consequence is that licensed health care entities and consumers must acquaint themselves with the revised regulation. The long-term consequences are unknown at this time.

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**STAKEHOLDER Comment for Amendments to**  
6 CCR 1011, Chapter II, General Licensure Standards, Part 5  
Access to Patient Medical Records

6The following individuals and/or entities were included in the development of these proposed rules:  
7The Office of Legislative Legal Services.

8  
9The following individuals and/or entities will be notified if this proposed rule-making is scheduled for  
10consideration by the Board of Health: All currently licensed health care entities, all subscribers to the  
11Division's health facilities blog, the Colorado Hospital Association, the Colorado Health Care  
12Association, the Colorado Ambulatory Surgery Center Association; Apponte-Busam Consulting, the  
13Home Care Association of Colorado; and the American Physical Therapy Association.

14  
15On or before the date of publication of the notice in the Colorado Register, the Division will send  
16notice to persons and/or groups considered by the division to be interested parties to the proposed  
17rule-making, and those who have requested notification/information from the division regarding the  
18proposed rule-making.

19  
20Summarize Major Factual and Policy Issues Encountered and the Stakeholder Feedback Received. If  
21there is a lack of consensus regarding the proposed rule, please also identify the Department's efforts  
22to address stakeholder feedback or why the Department was unable to accommodate the request.

23  
24The proposed amendments are mandated by statute regardless of the policy issues.

25  
26Please identify health equity and environmental justice (HEEJ) impacts. Does this proposal impact  
27Coloradoans equally or equitably? Does this proposal provide an opportunity to advance HEEJ? Are  
28there other factors that influenced these rules?

29  
30The Division is unaware of any health equity or environmental justice impacts.

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**1DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**

**2Health Facilities Regulation Division**

**3STANDARDS FOR HOSPITALS AND HEALTH FACILITIES**

**4CHAPTER II – GENERAL LICENSURE STANDARDS**

**56 CCR 1011-1 Chap 02**

6 \* \* \* \* \*

**7Part 5. ACCESS TO PATIENT MEDICAL RECORDS**

8 \* \* \* \* \*

9 5.2.3.4 ~~RESERVED. A licensed health care entity shall charge no fees for a medical~~  
10 ~~records request received from another licensed health care provider or individual~~  
11 ~~regulated pursuant to 25-1-802(1), C.R.S., when the request is solely for the~~  
12 ~~purpose of providing continuing medical care to a patient.~~

13 \* \* \* \* \*



# COLORADO

## Board of Health

Department of Public Health & Environment

### NOTICE OF PUBLIC RULE-MAKING HEARING BEFORE THE COLORADO BOARD OF HEALTH

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 October 15, 2014, at 10 a.m. in the Sabin-Cleere Conference Room of the Colorado Department of Public Health and Environment, Bldg. A, First Floor, 4300 Cherry Creek Drive, South, Denver, CO 80246, to consider the promulgation of an amendment to 6 CCR 1011-1, Chapter II, General Licensure Standards.

The proposed amendments have been developed by the Health Facilities and Emergency Medical Services Division of the Colorado Department of Public Health and Environment pursuant to Sections 25-1.5-103 and 25-1-801, C.R.S. The proposed amendment strikes section 5.2.3.4 regarding an exemption from copying fees for patient records when requested solely for continuing medical care because that language is now inconsistent with the recently revised Section 25-1-801, C.R.S.

The agenda for the meeting and the proposed amendments will also be available on the Board's website, <https://www.colorado.gov/pacific/cdphe/boh>, at least 7 days prior to the meeting. The proposed rules, together with the proposed statement of basis and purpose, specific statutory authority and regulatory analysis will be available for inspection at the Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South EDO-A5, Denver, Colorado 80246-1530 at least five working days prior to the hearing. Copies of the proposed rules may be obtained by contacting the Colorado Department of Public Health and Environment, Health Facilities and Emergency Medical Service Division HFEMS-A2, 4300 Cherry Creek Drive S., Denver, CO 80246, (303) 692-2836.

The Board encourages all interested persons to participate in the hearing by providing written data, views, or comments, or by making oral comments at the hearing. At the discretion of the Chair, oral testimony at the hearing may be limited to three minutes or less depending on the number of persons wishing to comment. Pursuant to 6 CCR 1014-8, §3.02.1, written testimony must be submitted no later than five (5) calendar days prior to the rulemaking hearing. Persons wishing to submit written comments should submit them to: Colorado Board of Health, ATTN: Jamie L. Thornton, Program Assistant, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South EDO-A5, Denver, Colorado 80246-1530 or by e-mail at: [Jamie.thornton@state.co.us](mailto:Jamie.thornton@state.co.us)

Dated this 27<sup>th</sup> day of August, 2014.

Deborah Nelson  
Board of Health Administrator

# Notice of Rulemaking Hearing

**Tracking number**

2014-00919

**Department**

1000 - Department of Public Health and Environment

**Agency**

1011 - Health Facilities and Emergency Medical Services Division (1011, 1015 Series) - by Colo Bd of Health

**CCR number**

6 CCR 1011-1 Chap 07

**Rule title**

STANDARDS FOR HOSPITALS AND HEALTH FACILITIES: CHAPTER 07 - ASSISTED LIVING RESIDENCES

## Rulemaking Hearing

**Date**

10/15/2014

**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**

The proposed amendments are necessary in order to align the standards for assisted living residences with new rules being proposed by the Department of Health Care Policy and Financing (HCPF) regarding its Supportive Living Program. Proposed amendments will require Supportive Living Program providers to obtain an assisted living residence license from the Division and make 2 minor revisions in order to avoid conflicting with amendments proposed by the Dept. of Health Care Policy & Financing

**Statutory authority**

Sections 25-1.5-103, 25-27-101 and 25-27-104, C.R.S.

## Contact information

**Name**

Laurie Schoder

**Title**

Policy Analyst

**Telephone**

303-692-2832

**Email**

[laurie.schoder@state.co.us](mailto:laurie.schoder@state.co.us)



Dedicated to protecting and improving the health and environment of the people of Colorado

To: Members of the State Board of Health

From: Laurie Schoder, Policy Analyst, Health Facilities and Emergency Medical Services Division

Through: D. Randy Kuykendall, MLS; Director **D.R.K.**

Date: August 20, 2014

Subject: Proposed Amendments to 6 CCR 1011-1, Standards for Hospitals and Health Facilities, Chapter VII, Assisted Living Residences serving Individuals with a Brain Injury through the Supported Living Program, with a Request for the Rulemaking Hearing to occur on October 15, 2014

The Division is proposing amendments to its licensing standards for assisted living residences in order to align its rules with new rules being proposed by the Department of Health Care Policy and Financing (HCPF) regarding its Supportive Living Program.

The new rules proposed by HCPF will allow individuals who qualify for the Medicaid Home and Community Based Services Brain Injury Waiver to have access to the Supportive Living Program as a service. There are currently four facilities that provide services to individuals through the Supportive Living Program (SLP), but those facilities do not fit into any of the Division's existing license categories. Therefore, existing providers and potential new providers have not had any specific standards to guide them in the provision of those services. The proposed HCPF rules will require that SLP providers obtain an assisted living residence license from the Division in order to obtain Medicaid reimbursement for the provision of these services to eligible brain injured individuals. The Division's proposed amendments are minimal, but necessary to ensure that the regulations from the two agencies will mesh seamlessly and allow the provision of these essential community services.

The proposed amendments have been drafted in collaboration with Colin Laughlin, MPA, the Home and Community Based Services Adult Waiver Lead at HCPF and the current four providers of SLP services. The proposed amendments were also presented and discussed at the assisted living residence advisory meeting in July. The Division does not anticipate any controversy regarding the proposed amendments.





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**STATEMENT OF BASIS AND PURPOSE  
AND SPECIFIC STATUTORY AUTHORITY**

For Rules Pertaining to the Standards for Hospitals and Health Facilities  
6 CCR 1011, Chapter VII, Assisted Living Residences serving Individuals  
with a Brain Injury through the Supported Living Program  
August 20, 2014

9**Basis and Purpose:**

10  
11The Division is proposing amendments to its licensing standards for assisted living residences in  
12order to align its rules with new rules being proposed by the Department of Health Care Policy and  
13Financing (HCPF) regarding its Supportive Living Program. There are currently four facilities that  
14provide services to individuals through the Supportive Living Program (SLP), but those facilities do not  
15fit into any of the Division's existing license categories. Therefore, existing providers and potential  
16new providers have not had any specific standards to guide them in the provision of those services.  
17The new HCPF rules will require, among other items, that SLP providers obtain an assisted living  
18residence license from the Division. The Division needs to add this category of providers to its  
19definition of assisted living residence, along with two other minor revisions, in order to align its  
20regulations with those of the Department of Health Care Policy and Financing.

21  
22**These rules are promulgated pursuant to the following statutes:**

23  
24Section 25-1.5-103, C.R.S. (2014).  
25Section 25-27-101, C.R.S. (2014).  
26Section 25-27-104, C.R.S. (2014).

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27 SUPPLEMENTAL QUESTIONS

28  
29**Is this rulemaking due to a change in state statute?**

30  
31 \_\_\_\_\_ Yes  
32   X   No

33  
34**Is this rulemaking due to a federal statutory or regulatory change?**

35  
36 \_\_\_\_\_ Yes  
37   X   No

38  
39**Does this rule incorporate materials by reference?**

40  
41   X   Yes  
42 \_\_\_\_\_ No

43  
44**Does this rule create or modify fines or fees?**

45  
46   X   No

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**REGULATORY ANALYSIS**

2 For Rules Pertaining to the Standards for Hospitals and Health Facilities  
3 6 CCR 1011, Chapter VII, Assisted Living Residences serving Individuals  
4 with a Brain Injury through the Supported Living Program  
5 August 20, 2014  
6  
7

81. **A description of the classes of persons who will be affected by the rule, including  
9 classes that will bear the costs of the proposed rule and classes that will benefit from the  
10 rule.**

11  
12 The classes of persons who will be affected by the proposed amendments are individuals who  
13 qualify for the Medicaid waiver program entitled Home and Community Based Services for  
14 Brain Injury (HCBS-BI) and providers of Supportive Living Services (SLS) for those individuals.  
15 The amendments will allow these individuals to receive care that providers might otherwise be  
16 hindered from providing under the existing rules.  
17

182. **To the extent practicable, a description of the probable quantitative and qualitative  
19 impact of the proposed rule, economic or otherwise, upon affected class of persons.**

20  
21 The proposed amendments will have a positive qualitative impact on the individuals eligible for  
22 care under the HCBS-BI waiver because the amendments will remove any real or perceived  
23 obstacles to the provision of Supportive Living Services by assisted living residences.  
24 Additionally, the proposed amendments are necessary in order to establish clear standards for  
25 the providers of Supportive Living Services and avoid any regulatory conflict between state  
26 agencies.  
27

283. **The probable costs to the agency and to any other agency of the implementation and  
29 enforcement of the proposed rule and any anticipated effect on state revenues.**

30  
31 The Division does not anticipate any significant additional costs will be incurred by it or any  
32 other agency.  
33

344. **A comparison of the probable costs and benefits of the proposed rule to the probable  
35 costs and benefits of inaction.**

36  
37 The probable costs and benefits of the proposed amendments are detailed above. There is no  
38 benefit to inaction. Inaction would result in conflict between agency rules that would hinder the  
39 delivery of essential services. Therefore, the probable costs and benefits of the proposed rule  
40 outweigh the probable costs and benefit of inaction.  
41

425. **A determination of whether there are less costly methods or less intrusive methods for  
43 achieving the purpose of the proposed rule.**

44  
45 The determination is that there is no less costly or less intrusive method for achieving the  
46 purpose of the amendments.

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**A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule.**

Written guidance and policy documents were considered, but those items alone would not achieve the desired result of resolving potential conflicts in various agency regulations. Therefore, no other alternatives are deemed appropriate at this time.

**To the extent practicable, a quantification of the data used in the analysis; the analysis must take into account both short-term and long-term consequences.**

The anticipated short-term consequence will be that all four existing providers of Supportive Living Services must become licensed as an Assisted Living Residence, if they haven't already done so. The long-term consequence is updated regulations that align with those of other agencies and that facilitate the provision of Medicaid Supportive Living Services to eligible adults with a brain injury.

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**STAKEHOLDER Comment for Amendments to**  
6 CCR 1011, Chapter VII, Assisted Living Residences serving Individuals  
with a Brain Injury through the Supported Living Program

6The following individuals and/or entities were included in the development of these proposed rules:  
7Representatives of the Department of Health Care Policy and Finance, existing providers of  
8Supportive Living Program services, the Assisted Living Residence advisory group.

9  
10The following individuals and/or entities will be notified if this proposed rule-making is scheduled for  
11consideration by the Board of Health: All currently licensed assisted living residences, all subscribers  
12to the Division's health facilities blog, the Colorado Health Care Association and Leading Age  
13Colorado.

14  
15On or before the date of publication of the notice in the Colorado Register, the Division will send  
16notice to persons and/or groups considered by the division to be interested parties to the proposed  
17rule-making, and those who have requested notification/information from the division regarding the  
18proposed rule-making.

19  
20Summarize Major Factual and Policy Issues Encountered and the Stakeholder Feedback Received. If  
21there is a lack of consensus regarding the proposed rule, please also identify the Department's efforts  
22to address stakeholder feedback or why the Department was unable to accommodate the request.

23  
24No major factual or policy issues have been encountered thus far. The proposed amendments are  
25minimal and necessary in order to align with Supportive Living Program regulations proposed by the  
26Department of Health Care Policy and Financing.

27  
28Please identify health equity and environmental justice (HEEJ) impacts. Does this proposal impact  
29Coloradoans equally or equitably? Does this proposal provide an opportunity to advance HEEJ? Are  
30there other factors that influenced these rules?

31  
32The Division is unaware of any health equity or environmental justice impacts.

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**1DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**

**2Health Facilities and Emergency Medical Services Division**

**3STANDARDS FOR HOSPITALS AND HEALTH FACILITIES**

**4CHAPTER VII - ASSISTED LIVING RESIDENCES**

**56 CCR 1011-1 Chap 07**

6

\* \* \* \* \*

7These chapters of regulation incorporate by reference (as indicated within) material originally published  
8elsewhere. Such incorporation, however, excludes later amendments to or editions of the referenced  
9material. Pursuant to 24-4-103 (12.5), C.R.S., the Health Facilities Division of the Colorado Department of  
10Public Health And Environment maintains copies of the incorporated texts in their entirety which shall be  
11available for public inspection during regular business hours at:

12       Division Director  
13       Colorado Department of Public Health and Environment  
14       Health Facilities Division  
15       4300 Cherry Creek Drive South  
16       Denver, Colorado 80222-1530  
17       Main switchboard: (303) 692-2800

18Certified copies of material shall be provided by the division, at cost, upon request. Additionally, any  
19material that has been incorporated by reference after July 1, 1994 may be examined in any state  
20publications depository library. Copies of the incorporated materials have been sent to the state  
21publications depository and distribution center, and are available for interlibrary loan.

22

\* \* \* \* \*

**231.102 DEFINITIONS.**

24

\* \* \* \* \*

251.102(6) "Assisted living residence" means any of the following:

26       102(6)(a) A residential facility that makes available to three or more adults not related to the  
27               owner of such facility, either directly or indirectly through a resident agreement with the  
28               resident, room and board and at least the following services: personal services;  
29               protective oversight; social care due to impaired capacity to live independently; and  
30               regular supervision that shall be available on a twenty-four-hour basis, but not to the  
31               extent that regular twenty-four hour medical or nursing care is required.

32       102(6)(b) A residential treatment facility for the mentally ill which is an assisted living residence  
33               similar to the definition under Section 1.102 (6)(a), except that the facility is operated and  
34               maintained for no more than sixteen (16) mentally ill individuals who are not related to the

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1 licensee and are provided treatment commensurate to the individuals' psychiatric needs  
2 which has received program approval from the Department of Human Services.

3 102(6)(c) A SUPPORTIVE LIVING PROGRAM RESIDENCE THAT, IN ADDITION TO THE CRITERIA SPECIFIED IN  
4 PARAGRAPH (A) ABOVE, IS CERTIFIED BY THE COLORADO DEPARTMENT OF HEALTH CARE POLICY  
5 AND FINANCING TO ALSO PROVIDE HEALTH MAINTENANCE ACTIVITIES, BEHAVIORAL MANAGEMENT AND  
6 EDUCATION, INDEPENDENT LIVING SKILLS TRAINING AND OTHER RELATED SERVICES AS SET FORTH IN  
7 THE SUPPORTIVE LIVING PROGRAM REGULATIONS AT 10 CCR 2505-10, §8.515.85 (OCT. 1,  
8 2014), WHICH ARE HEREBY INCORPORATED BY REFERENCE.

9 The term "assisted living residence" does not include:

10 (i) ~~Any facility licensed in this state by the Department of Human Services as a~~  
11 ~~residential care facility for individuals with developmental disabilities pursuant to~~  
12 ~~Section 27-10.5-101, C.R.S., et seq.; or~~

13 (ii) ~~Any individual residential support services for individuals with developmental~~  
14 ~~disabilities provided in accordance with Section 27-10.5-101, C.R.S., et seq.,~~  
15 ~~unless specifically authorized to be an assisted living residence by the~~  
16 ~~Department of Human Services.~~

17 \* \* \* \* \*

## 181.105 ADMINISTRATIVE FUNCTIONS

### 191.105(1) Admissions

20 \* \* \* \* \*

21 105(1)(b) Who May Not be Admitted to the Facility. A facility shall not admit or keep any resident  
22 requiring a level of care or type of service which the facility does not provide or is unable  
23 to provide, and in no event shall a facility admit or keep a resident who:

24 \* \* \* \* \*

25 (iii) Needs medical or nursing services, as defined herein, on a twenty-four hour  
26 basis, except for care provided BY A SUPPORTIVE LIVING PROGRAM RESIDENCE OR by  
27 a psychiatric nurse in those facilities which are licensed to provide services  
28 specifically for the mentally ill.

29 \* \* \* \* \*

### 301.105(6) Discharge

31 105(6)(a) A resident shall be discharged only for one or more of the following reasons:

32 (i) When the facility cannot protect the resident from harming him or herself or  
33 others.

34 (ii) When the facility is no longer able to meet the resident's identified needs, based  
35 on the facility's discharge policy.

36 (iii) WHEN A SUPPORTIVE LIVING PROGRAM RESIDENT HAS MET HIS OR HER TRANSITIONAL  
37 PLANNING GOALS.

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## COLORADO

### Board of Health

Department of Public Health & Environment

#### NOTICE OF PUBLIC RULE-MAKING HEARING BEFORE THE COLORADO BOARD OF HEALTH

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 October 15, 2014, at 10 a.m. in the Sabin-Cleere Conference Room of the Colorado Department of Public Health and Environment, Bldg. A, First Floor, 4300 Cherry Creek Drive, South, Denver, CO 80246, to consider the promulgation of amendments to 6 CCR 1011-1, Chapter VII, Assisted Living Residences.

The proposed amendments have been developed by the Health Facilities and Emergency Medical Services Division of the Colorado Department of Public Health and Environment pursuant to Sections 25-1.5-103, 25-27-101 and 25-27-104, C.R.S. The proposed amendments are necessary in order to align the standards for assisted living residences with new rules being proposed by the Department of Health Care Policy and Financing (HCPF) regarding its Supportive Living Program. The proposed amendments will require Supportive Living Program providers to obtain an assisted living residence license from the Division and make two other minor revisions in order to avoid conflicting with amendments proposed by the Department of Health Care Policy and Financing.

The agenda for the meeting and the proposed amendments will also be available on the Board's website, <https://www.colorado.gov/pacific/cdphe/boh>, at least 7 days prior to the meeting. The proposed rules, together with the proposed statement of basis and purpose, specific statutory authority and regulatory analysis will be available for inspection at the Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South EDO-A5, Denver, Colorado 80246-1530 at least five working days prior to the hearing. Copies of the proposed rules may be obtained by contacting the Colorado Department of Public Health and Environment, Health Facilities and Emergency Medical Service Division HFEMS-A2, 4300 Cherry Creek Drive S., Denver, CO 80246, (303) 692-2836.

The Board encourages all interested persons to participate in the hearing by providing written data, views, or comments, or by making oral comments at the hearing. At the discretion of the Chair, oral testimony at the hearing may be limited to three minutes or less depending on the number of persons wishing to comment. Pursuant to 6 CCR 1014-8, §3.02.1, written testimony must be submitted no later than five (5) calendar days prior to the rulemaking hearing. Persons wishing to submit written comments should submit them to: Colorado Board of Health, ATTN: Jamie L. Thornton, Program Assistant, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South EDO-A5, Denver, Colorado 80246-1530 or by e-mail at: [Jamie.thornton@state.co.us](mailto:Jamie.thornton@state.co.us)

Dated this 27<sup>th</sup> day of August, 2014.

Deborah Nelson  
Board of Health Administrator

# Notice of Rulemaking Hearing

**Tracking number**

2014-00920

**Department**

1000 - Department of Public Health and Environment

**Agency**

1014 - Colorado State Board of Health

**CCR number**

6 CCR 1014-3

**Rule title**

CLEANUP OF METHAMPHETAMINE LABORATORIES

## Rulemaking Hearing

**Date**

10/15/2014

**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**

Consider proposed amendments to the Cleanup of Methamphetamine Laboratories.

**Statutory authority**

Sections 25-18.5-102, 25-18.5-106, and 25-18.5-107, C.R.S.

## Contact information

**Name**

Colleen Brisnehan

**Title**

Project Manager

**Telephone**

303-692-3357

**Email**

colleen.brisnehan@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: Joe Schieffelin, Manager, Hazardous Waste Program  
Colleen Brisnehan, Environmental Protection Specialist, Methamphetamine  
Laboratory Project Lead

Through: Gary W. Baughman, Division Director, Hazardous Materials and Waste  
Management Division *GWB*

Date: August 20, 2014

Subject: **Request for Rulemaking Hearing**  
Proposed Amendments to 6 CCR 1014-3, Regulations Pertaining to the Cleanup  
of Methamphetamine Laboratories, with a request for the rulemaking hearing to  
occur October 15, 2014.

The Department is proposing to amend 6 CCR 1014-3, Regulations Pertaining to the Cleanup of  
Methamphetamine Laboratories, to incorporate requirements of SB13-219 (Section 25-18.5-  
25102, C.R.S.). SB13-219 directs the Board of Health to:

- promulgate procedures for testing and evaluating contamination at illegal drug laboratories involving methamphetamine (meth labs);
- establish cleanup standards for the cleanup of meth labs;
- promulgate rules for a training and certification program for individuals and companies involved in assessment, decontamination and sampling of meth labs;
- establish fees for certification and monitoring of individuals and companies involved in assessment, decontamination and sampling of meth labs;
- establish fees for approval of persons that train individuals involved in assessment, decontamination and sampling of meth labs; and
- promulgate rules for determining administrative penalties for violations of the statute and regulation.

The proposed amendments revise current rules and add new language as required by SB 13-  
2019. The revisions to the current rules were extensive; as such the current rule is being  
repealed (Line 2271-3369) in its entirety and being replaced with the proposed language (Line  
421-2270). The Department has conducted an extensive stakeholder process to develop the  
proposed changes to the regulations. The Department asks the Board of Health to schedule a  
rulemaking hearing on the proposed rule changes for October, 2014.

**Changes to current rule, reflected in Part 1 of the proposed rule, include:**

- New definitions as directed by SB 13-219

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4300 Cherry Creek Drive S., Denver, CO 80246-1530 P 303-692-2000 www.colorado.gov/cdphe  
John W. Hickenlooper, Governor | Larry Wolk, MD, MSPH, Executive Director and Chief Medical Officer



- New definitions to align with current practice, address stakeholder feedback clarity, and define new terms associated with new requirements.
- Change in definition of existing terms, including contamination, decontamination, and methamphetamine.
- Addition of a screening level assessment phase for real estate transactions, including the number of samples required to screen for meth contamination.
- Update and elaborate on the decontamination and removal procedures to align with current practice, clarify requirements and include some disclosures.
- Improve alignment of meth lab waste handling procedures with hazardous and solid waste disposal requirements.
- Clarify restrictions on conflict of interest between Consultants and Contractors to ensure that a person or company cannot perform clearance on their own decontamination project, and that there is no business relationship between the Consultant and Contractor.
- Move requirements from the appendices into the body of the rule to consolidate and improvement alignment across each phase of the clean-up.
- Update incorporations by reference.
- Replace the term “functional space” with “room” to provide a more clear basis for determining the number of clearance samples that must be collected. This was in response to some industrial hygienists improperly designating functional spaces in order to reduce the number of required clearance samples. In some cases, an entire level of a home was designated as a functional space, resulting in the collection of only one composite sample from each level of the home. The use of “room” instead of “functional space” will ensure that clearance samples are collected from every room, ensuring adequate and representative sample collection at all properties.
- Elimination of the minimum amount of sample area required for clearance sampling of a single meth lab. The new per room sampling requirements eliminate the need for minimum sample area requirements.
- Reduction in the number of individual samples (aliquots) that can be included in a composite sample from 5 to 4. This was done in response to information that any more than 4 aliquots can impact the analytical laboratories ability to extract the sample.
- Change in the cleanup level specific to attics, crawl spaces and other limited access areas such as wall cavities. This was done as a result of the cost and difficulty of cleaning up these areas to achieve the current cleanup level. Because these limited access areas present a much lower exposure concern than living spaces, cleaning them to living space cleanup level, which is based on child exposure, is not necessary. Therefore, a cleanup level for adult-only exposure was calculated for limited access areas (attics, crawl spaces, and wall cavities).
- Change in the cleanup level for pre-painted surfaces, which are surfaces that were painted before the presence of contamination was known. Under the current regulation, if contamination in the area is above the standard, the pre-painted surfaces have to be removed. This often results in a property being gutted due to relatively low concentrations of meth. The new cleanup level for pre-painted surfaces takes into account the fact that much of the contamination on these surfaces is trapped by the paint and is not available for exposure. The new level will allow



surfaces to remain, with additional encapsulation, when there are relatively low levels of meth beneath the paint. Use of the pre-painted surface cleanup level and encapsulation process is limited to situations where the property was not previously known to be contaminated. Painting cannot be otherwise used as a means of compliance or to change the target cleanup level when meth contamination is known to exist. It should be noted that the level for pre-painted surfaces is equivalent to California's health based standard for all surfaces.

**Additions to current rule reflected in Part 2 and Part 3 include:**

- Training and certification requirements for individuals and companies involved in assessment, decontamination and sampling of meth labs, as required by SB 13-219. The bill was introduced in response to media coverage of instances where meth lab cleanup and clearance was not done correctly, resulting in families buying and moving in to properties that were still contaminated with meth. Because the statute does not include a cleanup oversight program at the state level, and provides local agencies cleanup authority but no mandate, many cleanups are conducted without agency oversight. Establishing a state level training and certification program, requiring meth lab work to be conducted by qualified contractors and consultants, was seen as an effective way address the issue of improper cleanup.
- OSHA training as a qualification for certification under Part 2 of the proposed rule. While OSHA standards apply to workers performing meth lab work, OSHA standards are independent of the proposed rule and the Department has no authority to enforce OSHA standards. Thus, the proposed rule does not incorporate OSHA standards. Rather, it includes OSHA training as a qualification for certification to ensure that individuals have a base level of required training necessary to perform their jobs in a safe manner.
- Fees necessary to fund the implementation of SB 13-219, including establishing the regulation, administering the training and certification program, and enforcing the requirements of the regulation and statute through training audits, random document audits and work site inspections, complaint response and enforcement.
- Enforcement as directed by SB 13-219, including penalties for violations of the regulation and statute.



130 **STATEMENT OF BASIS AND PURPOSE**  
131 **AND SPECIFIC STATUTORY AUTHORITY**

132 for Amendments to

133 **6 CCR 1014-3,**

134 **Regulations Pertaining to the Cleanup of Methamphetamine Laboratories**

135 August 20, 2014

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138 **Basis and Purpose.**

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140 These amendments to 6 CCR 1014-3, Regulations Pertaining to the Cleanup of  
141 Methamphetamine Laboratories, are being made pursuant to the authority granted the Board of  
142 Health in §25-18.5-102, C.R.S.

143

144 A recent law, SB13-219, amended §25-18.5-102, C.R.S., directing the Board of Health to  
145 promulgate:

146 1a) procedures for testing and evaluating contamination at illegal drug laboratories involving  
147 methamphetamine (meth labs);

148 1b) cleanup standards for the cleanup of meth labs;

149 1c) rules for a training and certification program for individuals and companies involved in  
150 assessment, decontamination and sampling of meth labs;

151 1d) definition of “assessment”, “decontamination” and “sampling”;

152 1e) procedures for the approval of persons to train consultants or contractors in the  
153 assessment, decontamination, or sampling of illegal drug labs; and

154 1f) procedures for contractors and consultants to issue certificates of compliance to property  
155 owners upon completion of assessment, decontamination and sampling of illegal drug  
156 laboratories to certify that the remediation of the property meets the cleanup standards  
157 established by the Board.

158 SB 13-219 directs the Board to establish fees for:

159 2a) certification and monitoring of individuals and companies involved in assessment,  
160 decontamination and sampling of meth labs;

161 2b) monitoring of individuals and companies involved in the assessment, decontamination,  
162 and sampling of illegal drug laboratories, necessary to ensure compliance with the statute  
163 and regulation; and

164 2c) approval of persons that train individuals involved in assessment, decontamination and  
165 sampling of meth labs.

166 SB 13-219 directs the Board to adopt rules for determining administrative penalties for violations  
167 of the statute and regulation.

168

169 Statutory directives 1a) and 1b) listed above were originally established in 2005 and resulted in  
170 the current regulations (Part 1). However, SB 13-219 modified certain portions of the directives  
171 requiring some changes to Part 1. Statutory directives 1c) through 1f) and 2a) through 2c) are  
172 new requirements to establish a new regulatory program. These directives are encompassed in  
173 a new Part 2 of the regulations. The last statutory directive establishes a new program to



174enforce the statute and regulations. The last directive is encompassed in Part 3 of the  
175regulations.

176

177The existing regulations, Part 1, applies to owners of properties with meth contamination, and to  
178those who perform assessment, decontamination and sampling at meth contaminated  
179properties. Revisions to Part 1 are necessary to incorporate statutory changes made by SB13-  
180219 that include clarifications to existing language, and to update procedures to conform with  
181best and current industry practice.

182

183A new section, Part 2, is being added to the regulation and establishes a training and  
184certification program for individuals involved in meth lab assessment, decontamination and  
185sampling. The new section of the regulation will apply to individuals and companies that  
186perform assessment, decontamination and sampling at meth contaminated properties, and to  
187individuals and companies to that provide training required by the regulation. There will be fees  
188associated with the required training and certification program, which will be paid by certified  
189individuals, companies and training providers. There are no known costs to local governments  
190due to the revisions due to revisions in Part 2.

191

192A new section, Part 3, is being added to the regulation and establishes a program to enforce the  
193requirements of the statute and regulation. The new section of the regulation will apply to  
194individuals and companies that perform assessment, decontamination and sampling at meth  
195contaminated properties, and to individuals and companies to that provide training required by  
196the regulation. There will be penalties associated with violations of the statute and regulation.  
197There are no known costs to local governments due to the revisions in Part 3.

198

199The Department would like the Board of Health to schedule a rulemaking hearing on the  
200proposed rule changes for October, 2014.

201

202The Department has conducted an extensive stakeholder process to develop the proposed  
203changes and additions to the regulations. As of the date of this memo, we anticipate that all  
204stakeholder issues will be resolved by the date of the rulemaking hearing.

205

#### 206**Specific Statutory Authority.**

207

208These rules are promulgated pursuant to §25-18.5-102, C.R.S. The powers and duties of the  
209Department are set forth in §25-18.5-106, C.R.S. The authority to enforce the rules is set forth  
210in §25-18.5-107, C.R.S.

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### **SUPPLEMENTAL QUESTIONS**

215

216**Is this rulemaking due to a change in state statute?**

217

218                      X   Yes, the bill number is SB13-219; rules are        authorized   X   required.

219 \_\_\_\_\_ No

220

221 **Is this rulemaking due to a federal statutory or regulatory change?**

222

223 \_\_\_\_\_ Yes

224   X   No

225 **Does this rule incorporate materials by reference?**

226

227   X   Yes

228 \_\_\_\_\_ No

229 **Does this rule create or modify fines or fees?**

230   X   Yes

231 \_\_\_\_\_ No



**REGULATORY ANALYSIS**  
for Amendments to  
**6 CCR 1014-3,**  
**Regulations Pertaining to the Cleanup of Methamphetamine Laboratories**  
August 20, 2014

**A description of the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.**

The proposed amendments will primarily affect consultants who assess and sample illegal drug laboratories involving methamphetamine (meth labs), contractors who decontaminate meth labs, and entities that provide training to these consultants and contractors. The consultants, contractors and training providers will bear the costs of implementing the training and certification program through fees charged by the Department. These costs may be passed on to property owners; however, it is anticipated that the amendments reflected in Part 1 of the proposed rule will generally decrease the cost of cleaning up meth labs, resulting in a net decrease in costs to the consumer. For example, the cleanup level based on adult-only exposure in attics and crawl spaces is expected to significantly reduce the cost of cleanup in those areas, while still being protective of public health. Similarly, the cleanup level for pre-painted surfaces should reduce the amount of removal required at properties where low level contamination is discovered after the home has been remodeled. This will also reduce costs while remaining protective. The establishment of decontamination procedures for specific types of personal property that require no follow-up sampling will reduce costs and is anticipated to reduce the amount of cleanable personal property being sent to landfills due to the current testing requirements

Other classes of persons that may be affected by the proposed rule include local law enforcement, county or local health departments, or other local entities responsible for oversight of meth lab cleanup. SB 13-219 allows, rather than requires, a local government to declare that an illegal drug lab that has not met remediation standards and is a public health nuisance. The rule acknowledges that a local government may choose to be involved; however, local government involvement is not required and the rules do not prescribe local government involvement. In addition, the rule requires Consultants and Contractors provide local governments a copy of the certificate of compliance. This ensures that local government is informed. It is anticipated that training and certification program, and the Department's ability to enforce regulatory requirements, will have a positive impact on local government oversight programs by ensuring that individuals involved in meth lab assessment, decontamination and sampling are properly trained and are held accountable for regulatory violations. Nothing in the rulemaking imposes a mandate on local government.

**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 proposed amendment will have an economic impact on consultants who assess and sample illegal drug laboratories involving meth labs, contractors who decontaminate meth labs, and entities that provide training to these consultants and contractors. The costs will include fees for certification of individuals and companies performing work under the regulation, and for approval of training providers. Additional costs will include the cost of attending required training. These costs will likely be passed on to the consumer. However, as discussed above, it is anticipated that the amendments reflected in Part 1 of the proposed rule will generally decrease the cost of cleaning up meth labs resulting in a net decrease in costs to the consumer while maintain protection of public health.

**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.**

Section 25-18.5-106, C.R.S., establishes powers and duties of the Department, including implementing, coordinating and overseeing the rules promulgated by the Board for meth labs. Section 25-18.5-102(2), C.R.S., directs the Board to establish fees to cover the cost of implementing the training and certification program and monitoring individuals and companies involved in assessment, decontamination and sampling of meth labs. Section 25-18.5-106, C.R.S., establishes the Illegal Drug Laboratory Fund for the fees collected pursuant to the regulation and to cover Department costs for implementation of the regulation. SB13-219 included an appropriation for 0.5 FTE annually to the Department to implement the training and certification program and 0.1 FTE to the Attorney General's Office, for the fiscal year beginning July 2013, for legal services provided to the Department related to the act. There are no other known or anticipated costs to the Department or any other agency.

**A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.**

The proposed amendments provide a much needed training and certification program to ensure that individuals involved in meth lab assessment, decontamination and sampling are properly trained. The proposed amendment would also ensure that individuals and companies that violate the statute and regulation are held accountable.

Inaction is not an option since Section 25-18.5-102, C.R.S., requires the Board to promulgate rules to establish a training and certification program for individuals and companies involved in assessment, decontamination and sampling of meth labs. While the training and certification requirement will increase costs to consultants and contractors, the proposed amendments reflected in Part 1 are expected to decrease the cost of meth lab cleanup, resulting in a net decrease in costs while maintaining protection of public health.

**A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.**

The purpose of the proposed amendment is to align the existing rule with the statute, comply with SB 13-219, and establish a training and certification program and approval

process for individuals and companies involved in assessment, decontamination and sampling of meth labs, as required by Section 25-18.5-102, C.R.S. The fees to be established under the proposed amendment are necessary to implement the required program.

**Alternative Rules or Alternatives to Rulemaking Considered and Why Rejected.**

The proposed amendment was developed by a process that included stakeholder involvement in drafting the content of the rule. Although the content of the rule was changed during this process based on questions and comments raised by stakeholders, as well as review by the Attorney General's Office, there were no alternate rules considered or rejected.

**To the extent practicable, a quantification of the data used in the analysis; the analysis must take into account both short-term and long-term consequences.**

The analysis is based on the requirements of SB13-219, Section 25-18.5-102, C.R.S., and experience gained by Department staff and stakeholders through implementing the existing regulation. Comments and concerns raised during stakeholder work group sessions were also taken into account.

**STAKEHOLDER Comment**  
for Amendments to  
**6 CCR 1014-3,**  
**Regulations Pertaining to the Cleanup of Methamphetamine Laboratories**  
August 20, 2014

The following individuals and/or entities were included in the development of these proposed rules:

- consultants that assess and sample meth labs,
- contractors that clean up meth labs,
- training providers,
- analytical laboratories that conduct methamphetamine analysis,
- local health departments that oversee meth lab cleanups,
- the Apartment Association of Metro Denver,
- the Colorado Association of Realtors,
- individual real estate professionals, and
- attorneys representing several of the above-listed entities.

Homeowners are a category of stakeholders not specifically represented during the stakeholder process. However, the Division posted information on the rulemaking process on its web site, allowing any interested party to participate. A few private parties requested inclusion on the stakeholder distribution list, but none have participated in the work group meetings or general stakeholder meetings. The Division is contacted frequently by property owners seeking information and technical assistance. Feedback from these property owners has been supportive of requiring training and certification for consultants and contractors.

The Division began an extensive stakeholder process on August 22, 2013, with an initial stakeholder meeting. At the meeting, stakeholders were given the opportunity to sign up for one or more of three focused work groups. The Division also posted stakeholder information on its website, including an online form that allowed stakeholders to be added to the general distribution list or work group lists. Twenty two (22) work group meetings were held from September 2013 through May 2014. The work groups met on the following dates:

- Regulation Language Work Group meetings were held on September 17, 2013, November 13, 2013, Jan. 29, 2014, February 19, 2014, and March 19, 2014.
- Consultant (IH) Training and Sampling Work Group meetings were held on October 9, 2013, November 6, 2013, January 23, 2014, February 11, 2014, March 6, 2014, and April 3, 2014.
- Contractor Training and Decontamination Work Group meetings were held on September 24, 2013, October 24, 2013, January 16, 2014, February 6, 2014, February 26, 2014, and March 27, 2014.
- Combined work group meetings, involving members of all three work groups, were held on April 17, 2014, April 29, 2014, May 14, 2014 and May 29, 2014.

398 • The Division also met exclusively with a group of local oversight agencies on August 22,  
399 2013 and October 15, 2013.

400

401The Division worked collaboratively with the stakeholder work groups to craft and refine Parts 1  
402and 2 of the proposed rule. Stakeholders provided input on all aspects of these parts of the rule,  
403and the resulting language reflects general stakeholder consensus. The current regulation forms  
404the basis for Part 1 of the proposed rule. Revisions to Part 1 are primarily based on Division and  
405stakeholder experience gained during implementation of the current regulation, advances in the  
406“state-of-the-science” and stakeholder requested clarifications. Part 2 of the proposed rule  
407incorporates the training and certification program required by SB 13-219. The Division worked  
408closely with stakeholders to establish the proposed training curricula and the certification  
409process. The Division also referenced meth lab training and certification programs in other  
410states as well as the Air Quality Control Division’s asbestos and lead-based paint training and  
411certification programs. The content of Part 3 of the proposed rule incorporates the enforcement  
412requirements of SB 13-219, and is largely dictated by §25-18.5-107, C.R.S. The Division  
413provided Part 3 to work groups for review, and minor modifications were made that did not  
414conflict with §25-18.5-107, C.R.S. or Division enforcement policy.

415

416At the conclusion of the work group process, the draft proposed rule was issued to the broad  
417stakeholder distribution list in June 2014, and posted on the Division’s web site. A general  
418stakeholder meeting was held on June 26, 2014 to allow stakeholders a chance to provide  
419feedback on the draft language and fees. Another general stakeholder meeting is scheduled for  
420August 5, 2014. No additional meetings are planned unless requested by stakeholders.

421

422The following individuals and/or entities were notified that this rule-making was proposed for  
423consideration by the Board of Health:

424

- 425 • consultants that assess and sample meth labs,
- 426 • contractors that clean up meth labs,
- 427 • training providers,
- 428 • analytical laboratories that conduct methamphetamine analysis,
- 429 • all county Environmental Health Directors,
- 430 • staff at local health departments and other local agencies that oversee meth lab  
431 cleanups,
- 432 • the Colorado Apartment Owners Association,
- 433 • the Colorado Association of Realtors,
- 434 • the Colorado Department of Transportation
- 435 • individual real estate professionals,
- 436 • attorneys representing several of the above-listed entities, and
- 437 • other individuals that requested notification.

438

439

440On or before the date of publication of the notice in the Colorado Register, the Division sent  
441notice to persons and/or groups considered by the division to be interested parties to the  
442proposed rule-making, and those who have requested notification/ information from the division  
443regarding the proposed rule-making? \_\_\_\_ Yes \_\_\_\_ No. The Division provided notice on  
444TBD.

445

446**Summary of Major Factual and Policy Issues Encountered and Stakeholder Feedback**  
447**Received**

448

449The general content of the rule is specified by Section 25-18.5-101, C.R.S., et. seq. The  
450specific language and content of the rule has been further developed in conjunction with several  
451stakeholder work groups.

452

453Stakeholders requested that a term other than *illegal drug laboratory* or *methamphetamine*  
454*laboratory* be used for properties contaminated by meth. The definition of *illegal drug laboratory*  
455in Section 25-18.5-101, C.R.S., includes properties contaminated as a result of manufacturing,  
456processing, cooking, disposal, use or storage. This means that properties contaminated due to  
457meth use are considered *illegal drug laboratories* involving methamphetamine. The general  
458public considers meth labs to be places where meth was manufactured. Stakeholders  
459expressed the concern that calling a property contaminated by meth use an *illegal drug*  
460*laboratory* or *methamphetamine laboratory* results in an unnecessary stigma on the property.  
461To address this stakeholder concern, the term *methamphetamine-affected property* is used in  
462the proposed amendment, which is defined as an *illegal drug laboratory* involving  
463methamphetamine.

464

465Stakeholders identified several issues regarding implementation of the existing regulation that  
466are addressed in the proposed amendment. These included the need to revise and clarify  
467sampling criteria, the need to update decontamination procedures to incorporate current  
468industry standards, and alternate cleanup levels for attics and crawl spaces to reduce the cost  
469of decontaminating these low exposure areas. Thus far, consensus has been reached on all  
470issues discussed and we anticipate that all stakeholder issues will be resolved by the date of the  
471rulemaking hearing.

472

473SB 13-219 allows, rather than requires, a local government to declare that an illegal drug lab  
474that has not met remediation standards is a public health nuisance. The rule acknowledges that  
475a local government may choose to be involved; however, local government involvement is not  
476required and the rules do not prescribe local government involvement. In addition, the rule  
477requires Consultants and Contractors provide local governments a copy of the certificate of  
478compliance. This ensures that the local government is informed. Nothing in the rulemaking  
479imposes a mandate on local government.

480

481

482**Health equity and environmental justice (HEEJ) impacts**

483

484No health equity or environmental justice impacts associated with the proposed amendment  
485were identified.

486

487

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490



## DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

### State Board of Health

#### 6 CCR 1014-3

### REGULATIONS PERTAINING TO THE CLEANUP OF METHAMPHETAMINE-AFFECTED PROPERTIES

#### PART 1: PROPERTY ASSESSMENT, DECONTAMINATION AND CLEARANCE

##### 1.0 Purpose and applicability

- 1.1 Purpose. 6 CCR 1014-3, Parts 1, 2 and 3 (hereafter, "these regulations") implement the directive § 25-18.5-102, C.R.S., gives to the Board of Health to establish standards for:
  - 1.1.1 sampling, assessment and decontamination cleanup of illegal drug laboratories involving methamphetamine;
  - 1.1.2 training and certification of persons involved in sampling, assessment and decontamination of such properties;
  - 1.1.3 approval of trainers;
  - 1.1.4 certification that properties have been decontaminated to the standards established in these regulations;
  - 1.1.5 assessment of administrative penalties; and
  - 1.1.6 fees for the certification and monitoring of Contractors and Consultants, and for the approval of trainers.
- 1.2 Applicability - The requirements of this Part apply:
  - 1.2.1 When an owner of property has received notification from a peace officer that chemicals, equipment, or supplies indicative of a methamphetamine-affected property are or have been located at the property, or
  - 1.2.2 When a methamphetamine-affected property is otherwise discovered, and the owner of the property where the methamphetamine-affected property is located has received notice, or
  - 1.2.3. When screening level sampling is conducted at a property that has not been deemed a methamphetamine-affected property.
- 1.3 Properties that met the clean-up standards and documentation requirements of this Part as it existed prior to the effective date of the 2014 amendments to this Part shall be deemed in compliance with this Part.



528 1.4 Materials that are removed or demolished in lieu of decontamination must be disposed at  
529 a solid waste landfill, but are not otherwise subject to regulation under this Part.

530**2.0 Definitions.** The following definitions apply to Parts 1, 2 and 3 of these regulations.

531 “Aliquot” means a discrete sample comprising a known fraction of a composite sample. Aliquots  
532 making up a composite sample must be of equal area or volume.

533 “Assessment” means an evaluation of a property to determine the current condition, including the  
534 nature and extent of observable or detectable contamination, chemical storage and disposal.

535 “Building” means a structure which has the capacity to contain, and is designed for the shelter of,  
536 persons, animals, or property, or place adapted for overnight accommodation of persons or  
537 animals, whether or not a person or animal is actually present. “Building” includes manufactured  
538 homes as defined in Section 38-29-102(6), C.R.S., and mobile homes as defined in Section 38-  
539 12-201.5(2), C.R.S.

540 “Caustic” means capable of burning or corroding by chemical action.

541 “Certified Industrial Hygienist” or “CIH” means an individual who is certified by the American  
542 Board of Industrial Hygiene or its successor.

543 “Chemical storage area” means any area where chemicals used in the manufacture of  
544 methamphetamine are stored or have come to be located.

545 “Cleanup standard” means the numerical value, established in Section 7.0 of this Part 1, that  
546 causes the Consultant to determine if an area is compliant or noncompliant based on the results  
547 of sampling conducted in accordance with the sampling procedures presented in Section 6 of this  
548 Part 1.  
549

550 “Composite sample” means a sample comprised of multiple aliquots collected from separate  
551 locations.

552 “Consultant” means a Certified Industrial Hygienist or Industrial Hygienist who is not an  
553 employee, agent, representative, partner, joint venture participant, or shareholder of the  
554 contractor or of a parent or subsidiary company of the contractor, and who has been certified  
555 under Section 25-18.5-106 C.R.S and these regulations.

556 “Contaminant” means a chemical residue resulting from the manufacturing, storage, processing  
557 or use of methamphetamine.  
558

559 “Contamination” or “Contaminated” means the presence of contaminants.

560 “Contractor” means a person that is hired to decontaminate an illegal drug laboratory in  
561 accordance with the requirements of these regulations, and that is certified under Section 25-  
562 18.5-106 C.R.S and these regulations.

563 “Cooking area” means any area where methamphetamine manufacturing is occurring or has  
564 occurred.

565 “Corrosive” is an aqueous substance with a pH of 2.0 or less or 12.5 or greater.

566 “Decontamination” means the process of reducing the level of contamination using methods  
567 approved under these regulations.

- 568 “Decontamination Supervisor” is a classification of Contractor. A Decontamination Supervisor is  
 569 a person who is certified under this Part to supervise the decontamination of methamphetamine-  
 570 affected properties by Decontamination Workers and Ventilation Contractors, and to  
 571 decontaminate methamphetamine-affected properties.
- 572 “Decontamination Worker” is a classification of Contractor. A Decontamination Worker is a  
 573 person who is certified under this Part to perform decontamination of methamphetamine-affected  
 574 properties under the supervision of a Decontamination Supervisor.
- 575 “Demolition” means the complete deconstruction and removal of all of a structure, including all  
 576 framing and permanent structural components other than foundations or slabs. Demolition of a  
 577 vehicle means crushing or shredding a motor vehicle to produce scrap metal.
- 578 “Department” means the Colorado Department of Public Health and Environment.
- 579 “Detergent” means a surfactant or mixture of surfactants with cleaning properties in dilute  
 580 solutions.
- 581 “Discrete sample” means a sample collected from a single location and comprised of a single  
 582 aliquot.
- 583 “Disposal” means discharge, deposit, dumping, spilling, leaking, or placing of methamphetamine  
 584 lab waste. Disposal also means the ultimate disposition of materials removed from contaminated  
 585 properties in accordance with applicable regulatory requirements.
- 586 “Documentation” means preserving a record of an observation through writings, drawings,  
 587 photographs, or other appropriate means.
- 588 “Encapsulation” means applying a surface sealant to create a physical barrier for the purpose of  
 589 decreasing or eliminating potential exposure to any residual contaminants that may remain  
 590 following decontamination.
- 591 “Firm” means any public or private corporation, partnership, association, firm, trust or estate.
- 592 “HEPA filtration” means a filtering system capable of trapping and retaining at least 99.97 percent  
 593 of all monodispersed particles 0.3 microns in diameter or larger.
- 594 “Illegal drug laboratory” means the areas where controlled substances, as defined by Section 18-  
 595 18-102, C.R.S., have been manufactured, processed, cooked, disposed of, used, or stored and  
 596 all proximate areas that are likely to be contaminated as a result of the manufacturing,  
 597 processing, cooking, disposal, use, or storage.
- 598 “Independent” means the absence of a business relationship or agreement between a Consultant  
 599 and a Contractor that could give rise to a real or apparent conflict of interest in the conduct of  
 600 activities that are regulated under these regulations. A Contractor and a Consultant are not  
 601 independent of one another if either one is an employee, agent, representative, partner, joint  
 602 venturer, shareholder, or parent or subsidiary company of the other.
- 603 “Industrial hygienist” has the same meaning as set forth in Section 24-30-1402, C.R.S.
- 604 “In good standing” means that the person possesses a current, valid certification or authorization  
 605 under these regulations.

606 “Limited exposure area” means an area that is not used, or intended to be used, as a living space  
 607 or part of a ventilation system. Limited exposure areas include attics, crawl spaces, and wall  
 608 cavities not used as duct runs.

609 “Media” means the physical material onto which a sample substrate is collected. Media includes  
 610 cotton gauze, glass fiber filters, MCE membranes, etc.

611 “Methamphetamine” or “meth” means dextro-methamphetamine, levo-methamphetamine, and  
 612 unidentified isomers of the same, any racemic mixture of dextro/levo methamphetamine, or any  
 613 mixture of unidentified isomers of methamphetamine. The term includes derivatives, conjugates,  
 614 oxides, and reduced forms of the basic structure associated with CAS registration number 537-  
 615 46-2.

616 “Methamphetamine-affected property” is a type of illegal drug laboratory consisting of areas  
 617 where methamphetamine has been manufactured, processed, cooked, disposed of, used, or  
 618 stored and all proximate areas that are likely to be contaminated as a result of the manufacturing,  
 619 processing, cooking, disposal, use, or storage of methamphetamine or the chemicals used to  
 620 manufacture methamphetamine.

621 “Methamphetamine manufacturing” means the production, preparation, propagation,  
 622 compounding, conversion, or processing of methamphetamine, either directly or indirectly.

623 “Methamphetamine lab waste” means chemical wastes generated in, or apparatus and  
 624 components used in the production of methamphetamine, but does not include drug  
 625 paraphernalia such as pipes.

626 “Must” is used to indicate a mandatory requirement.

627 “Negative air unit” means a portable exhaust system equipped with HEPA filtration and capable of  
 628 maintaining a constant high velocity airflow out of the contained area, resulting in a constant low  
 629 velocity air flow into the contained area from adjacent areas.

630 “Non-porous” means resistant to penetration of liquids, gases, powders and includes non-  
 631 permeable surfaces or materials that are sealed. Non-porous materials include metal, glass,  
 632 plastic and the following materials, provided they are painted or sealed, and provided the paint or  
 633 sealant is in good condition: concrete, wood, tile, ceramic and drywall

634 “On-site wastewater treatment system” or “OWTS” means an absorption system of any size or  
 635 flow or a system or facility for treating, neutralizing, stabilizing, or dispersing sewage generated in  
 636 the vicinity, which system is not part of or connected to a sewage treatment works.

637 “Painted-over surface” means a surface that was painted after the cessation of contamination-  
 638 causing activities but prior to the discovery of a methamphetamine-affected property.

639 “Person” means any individual, public or private corporation, partnership, association, firm, trust  
 640 or estate; the state or any executive department, institution, or agency thereof; any municipal  
 641 corporation, county, city and county, or other political subdivision of the state; or any other legal  
 642 entity whatsoever which is recognized by law as the subject of rights and duties.

643 “Personal Property” means anything subject to ownership that is not real property.

644 “Porous” means easily penetrated or permeated by gases, liquids, or powders. Porous materials  
 645 include fabric, carpet, cardboard, fiber-board, cork, wood, unpainted drywall, or any other  
 646 permeable material that is not sealed.

- 647 “Property” means anything that may be the subject of ownership or possession, including land,  
648 buildings, structures, vehicles and personal belongings.
- 649 “Property owner,” for the purposes of real property, means the person holding record fee title to  
650 real property. “Property owner” also means the person holding title to a manufactured home.  
651 With respect to personal property, the term means the person who lawfully owns such property.
- 652 “Publicly owned treatment works” or “POTW” means a publicly owned domestic wastewater  
653 treatment facility. The term also means the municipality, as defined in 502(4) of the Clean Water  
654 Act, 33 U.S.C. § 1362(4), which has jurisdiction over the indirect discharges to and the discharge  
655 from such treatment works.
- 656 “Preliminary assessment” means an assessment of a methamphetamine-affected property in  
657 accordance with Section 4.0 of this Part 1.
- 658 “Quality assurance” or “QA” means an integrated system of management activities involving  
659 planning, training, quality control, assessment, data review, reporting, and quality improvement to  
660 ensure that a process, item or service is of the type and quality needed and expected by the user.  
661 QA is a management function that deals with setting policy and running an administrative system  
662 of controls to ensure the usability of the product (e.g., data).
- 663 “Quality control” or “QC” means a system of technical activities that measures the performance of  
664 a process, item, or service against a defined set of criteria or standard. QC is a technical function  
665 that includes activities such as calibrations and analyses of check samples (performance  
666 evaluation samples, duplicates, spikes, blanks, etc.) to assess the bias and precision associated  
667 with sample results.
- 668 “Removal” means the taking out or stripping of material or surfaces up to, but not including,  
669 demolition. Removal includes taking personal property out of a structure, and physically  
670 separating contamination from material or surfaces.
- 671 “Room” means a portion of space within a structure that is enclosed or partitioned off from other  
672 parts of the structure. Any space separated from other spaces by a door shall be considered a  
673 separate room, except that closets that are less than 75 ft<sup>2</sup> are not rooms. Two spaces separated  
674 by a partition less than four (4) feet in height may be considered one room. Two spaces  
675 separated by 10 or more stairs shall be considered separate rooms.
- 676 “Sampling” means the process of collecting measurements of a subset of a population to estimate  
677 the characteristics of the whole population.
- 678 “Screening level sampling” means an assessment, in compliance with Section 9 and Section 6 of  
679 this Part 1, of a property for the purpose of determining whether it is a methamphetamine-affected  
680 property.
- 681 “Sealed” means closed or protected against exposure, leakage or passage of liquids by coating.
- 682 “Shall” is used to indicate a mandatory requirement.
- 683 “Structure” means anything constructed or erected at a fixed location, whether installed on, above  
684 or below the surface of a parcel of land.
- 685 “Substrate” means the material from which a sample is being collected. Substrates may include  
686 soils, water, painted surfaces, carpet debris, unidentified powders, dust, etc.

687 “Vacuum sample” means a non-airborne dust sample collected from a known surface area of a  
 688 surface or material using standard vacuum sampling techniques as described in Section 6 of this  
 689 Part 1.

690 “Vehicle” means any object defined as a “vehicle” in Section 42-1-102, C.R.S. “Vehicle” includes  
 691 recreational vehicles, campers, buses with a toilet and a galley, trailers as defined in Section 42-  
 692 1-102(105) C.R.S., trailer coaches as defined in 42-1-102(106)(a) C.R.S., and motor homes as  
 693 defined in § 42-1-102(57), C.R.S. It also includes vehicles that are no longer capable of moving  
 694 themselves because they have been partially disassembled (e.g., a motor home with the wheels  
 695 and engine removed).

696  
 697 “Ventilation Contractor” is a classification of Contractor. A Ventilation Contractor is a person who  
 698 possesses a Ventilation Contractor certificate under Section 7 of this Part 2.

699 “Waste disposal area” means any area where chemicals used or generated in the manufacture of  
 700 methamphetamine are disposed or have come to be located.

701 “Wipe sample” means a surface sample collected by wiping a sample media on the surface being  
 702 sampled in accordance with Section 6 of this Part 1.

703  
 704 **3.0 Screening Level Assessment of Properties not known to be methamphetamine-affected**  
 705 **properties.** This section establishes procedures and standards for testing real property pursuant  
 706 to §38-35.7-103, C.R.S. Screening level assessments pursuant to this section are for the  
 707 purposes of determining if the property is a methamphetamine-affected property. The procedures  
 708 in this section are not to be used to make decontamination decisions.

709  
 710 3.1 Only Consultants in good standing may conduct screening-level assessments. The  
 711 Consultant shall personally inspect the property to gather all of the information necessary to  
 712 prepare a Screening Assessment Report.

713  
 714 3.2 If the Consultant conducts a background check, and this background check indicates that the  
 715 property is a methamphetamine-affected property, then the preliminary assessment  
 716 requirements of Section 4 and Section 6 of this Part 1 apply in lieu of this section.

717  
 718 3.3 The Consultant shall document any observed signs that the property, or any unit in a multi-  
 719 unit structure, is a methamphetamine-affected property. If any signs of a methamphetamine-  
 720 affected property are observed, then the preliminary assessment requirements of Section 4  
 721 and Section 6 of this Part 1 apply in lieu of this section.

722  
 723 3.4 If the screening level assessment involves a multiple unit structure, each accessible unit must  
 724 be inspected for signs that the unit has been used as an illegal drug laboratory. Any unit  
 725 exhibiting signs of being a methamphetamine-affected property is subject to the preliminary  
 726 assessment requirements of Section 4 and Section 6 of this Part 1 in lieu of this section. If  
 727 the screening level assessment involves a single unit with multiple tenants, each tenant's  
 728 living space must be inspected unless access is not granted. All access limitations shall be  
 729 documented in the Screening Level Assessment Report in accordance with Section 3.7 of  
 730 this Part 1.

731  
 732 3.5 The Consultant shall conduct limited composite wipe sampling of the structure for  
 733 methamphetamine (including fixtures, as appropriate), in accordance with Section 6 of this  
 734 Part 1.

735

- 736 3.6 The analytical laboratory's Practical Quantitation Limit (PQL) for methamphetamine may not  
 737 exceed 0.1ug. If any of the composite sample results are above 0.1 ug/100cm<sup>2</sup>, the property  
 738 owner must choose between the following two courses of action:
- 739 3.6.1 The property may be assumed to be a methamphetamine-affected property, with  
 740 no further sampling, and thus must comply with the preliminary assessment and  
 741 decontamination requirements of this Part 1; or  
 742
- 743 3.6.2 A full clearance sampling protocol as specified in Section 6 may be conducted. If  
 744 the clearance sampling results demonstrate that concentrations of  
 745 methamphetamine do not exceed the cleanup standards in Section 7 of this Part  
 746 1, the property is considered compliant with the clearance requirements of the  
 747 regulation. If the clearance sampling fails to demonstrate that meth  
 748 concentrations are below the specified cleanup standards, then the property  
 749 must be decontaminated in accordance with the requirements of this Part 1.  
 750
- 751 3.7 Information collected during the screening level assessment shall be documented in a  
 752 Screening Assessment Report and shall include, but not be limited to, the following, to the  
 753 extent available and applicable:  
 754
- 755 3.7.1 Property description including physical address, number and type of structures  
 756 present.
- 757 3.7.2 Description of structural features in all buildings, such as attics, false ceilings,  
 758 crawl spaces, and basements.
- 759 3.7.3 Identification and documentation of common ventilation systems connected to  
 760 adjacent units or common areas.
- 761 3.7.4 Summary of observations made during inspections.
- 762 3.7.5 Photographic documentation of property conditions.
- 763 3.7.6 Documentation of screening level sampling shall include:
- 764 3.7.6.1 a description of the sampling procedures used, including sample  
 765 collection, handling, and quality control/quality assurance (QA/QC);
- 766 3.7.6.2 documentation of the analytical methods used and laboratory QA/QC  
 767 requirements, including the laboratory analytical report and chain-of-  
 768 custody documentation; and
- 769 3.7.6.3 results of sampling, including a description of sample locations and a  
 770 computer generated figure illustrating the layout of the building(s) and  
 771 sample locations and identification. Sample results shall be presented as  
 772 reported by the analytical laboratory, and shall not be adjusted, changed  
 773 or manipulated in any way. Spiked samples submitted for analysis shall  
 774 not be used for purposes of compliance with the regulation.
- 775 3.7.7 The Consultant shall provide a copy of the Screening Assessment Report to the  
 776 Department within 30 days of receipt of laboratory results.

777 **4.0 Preliminary Assessment.** A preliminary assessment of all methamphetamine-affected properties  
 778 shall be conducted in accordance with this section and Section 6.1.2 of this regulation prior to the

779 commencement of property decontamination, unless the property owner elects to demolish the  
 780 property in lieu of assessment and decontamination pursuant to § 25-18.5-103(1)(a). No person  
 781 other than a Consultant in good standing may perform preliminary assessments. Information  
 782 gained during the preliminary assessment shall be the basis for property decontamination and  
 783 clearance sampling. Consultants shall use appropriate personal protective equipment during the  
 784 preliminary assessment. The Consultant shall ensure that during the preliminary assessment,  
 785 access to the property is limited to those with appropriate personal protective equipment who  
 786 have been trained and certified under Section 25-18.5-106 C.R.S. and Part 2 of these  
 787 regulations. The Consultant shall personally inspect the property to gather all of the information  
 788 necessary to prepare a Preliminary Assessment Report (other than the legal description of the  
 789 property and the background information described in Section 4.2), and shall document  
 790 information collected through photographs, notes, and other appropriate methods. The  
 791 Consultant shall evaluate the information collected during the preliminary assessment and record  
 792 his or her observations and findings in a Preliminary Assessment Report. The Preliminary  
 793 Assessment Report shall include, but not be limited to, the following, to the extent available and  
 794 applicable:

- 795 4.1 Property description, including physical address, legal description, number and type of  
 796 structures present, description of adjacent and/or surrounding properties, and any other  
 797 observations made.
- 798 4.2 Summary of information from review of available law enforcement reports regarding the  
 799 manufacturing method, chemicals present, cooking areas, chemical storage areas, and  
 800 areas of contamination or waste disposal.
- 801 4.3 Description of structural features in all buildings, such as attics, false ceilings, crawl  
 802 spaces, and basements, including:
- 803 4.3.1 If the building has an attic, a description of the integrity of the building ceiling (i.e.,  
 804 attic floor), any signs of access, storage, manufacturing or venting into the attic  
 805 (e.g., holes cut in ceiling for the purpose of venting gases from a cook), and a  
 806 description of observations of the ducting associated with all bathroom and  
 807 kitchen exhaust vents. If preliminary assessment sampling is conducted, include  
 808 the results of sampling in accordance with Section 6.  
 809  
 810
- 811 4.3.2 a description of the integrity of the building floor, and if there is a crawl space, a  
 812 description of any signs of access, storage, venting or disposal related to  
 813 methamphetamine manufacturing, integrity of any vapor barriers, and any signs  
 814 of disposal into the soil of the crawl space. The soil investigation shall be  
 815 conducted in accordance with the assessment procedures in Section 6 of this  
 816 Part. If the vapor barrier is intact and in good condition, and if there is no  
 817 indication of chemical disposal, the soil beneath the vapor barrier may be  
 818 presumed to meet the cleanup criteria, and no soil sampling is required.
- 819 4.4 Description of outdoor areas, including notation of the following:
- 820 4.4.1 Factors limiting the inspection, such as snow cover or heavy vegetation.
- 821 4.4.2 Conditions indicative of contamination.
- 822 4.5 Identification of manufacturing methods based on the Consultant's observations and law  
 823 enforcement reports, if available.

- 824 4.6 Identification of chemicals used, based on the Consultant's observations and knowledge  
825 of manufacturing method(s), and if available, identification and documentation of any  
826 methamphetamine lab wastes or precursor chemicals discovered at the property.
- 827 4.7 Identification and documentation of areas of contamination. This identification may be  
828 based on visual observation, law enforcement reports, proximity to chemical storage  
829 areas, waste disposal areas, cooking areas, use areas, or the professional judgment of  
830 the Consultant. All rooms of all buildings (except multi-unit buildings) on  
831 methamphetamine-affected properties must be assumed to be contaminated above the  
832 cleanup standards of Section 7, unless sampling conducted in accordance with the  
833 clearance level sampling protocols of Section 6 demonstrates the absence of such  
834 contamination in a given room. The Consultant may determine that assessment level  
835 sampling is appropriate to verify the presence or absence of contamination in a given  
836 room to assist in selecting an appropriate decontamination strategy. If the Consultant  
837 determines that assessment sampling is appropriate, such sample collection and analysis  
838 shall be conducted in accordance with the assessment level sampling protocols and  
839 other requirements of Section 6 of this Part 1.
- 840 4.8 Identification and documentation of chemical storage areas, waste disposal areas,  
841 cooking areas and/or use areas, if known.
- 842 4.9 Identification and documentation of signs of contamination such as staining, etching, or  
843 fire damage.
- 844 4.10 Description of plumbing system, including identification and documentation of potential  
845 disposal into the sanitary sewer or an on-site wastewater treatment system (OWTS). If  
846 an OWTS is present, a description of the results of field screening of the OWTS in  
847 accordance with Section 6 of this Part 1. If the Consultant determines that sampling of an  
848 OWTS is necessary to determine if methamphetamine lab wastes have been disposed of  
849 into an OWTS, include the results of sample collection and analysis conducted in  
850 accordance with Section 6.
- 851 4.11 For properties with multi-unit buildings, identification of adjacent units and common areas  
852 where contamination may have spread or been tracked.
- 853 4.11.1 If contamination above the standard is identified in any living space in a multi-unit  
854 structure with shared attics (i.e., open space with no fire walls), the shared attic  
855 spaces shall be investigated to determine whether they are also contaminated. If  
856 access is not available to inspect or sample shared attic spaces, the owner of the  
857 contaminated unit or their representative shall give notice to the owner(s) of the  
858 shared attics and the owners of the units that are immediately below the shared  
859 attic spaces that methamphetamine contamination may be present. The  
860 consultant shall document any limitations on access in the final report.
- 861 4.11.2 If a multi-unit structure has connected crawl spaces, the crawl spaces shall be  
862 investigated to determine whether the connected crawl spaces are also  
863 contaminated. If access is not available to inspect or sample connected crawl  
864 spaces, the owner of the methamphetamine-affected property or their  
865 representative shall give notice to the owner(s) of the connected crawl spaces  
866 and the owners of the units that are immediately above the connected crawl  
867 spaces that methamphetamine contamination may be present. Any limitation on  
868 access shall be documented in the final report.



- 871 4.12 Identification and documentation of any common ventilation systems connected to  
872 adjacent units or common areas.
- 873 4.13 Identification of surfaces that are known or suspected to have been painted after the  
874 cessation of contamination-causing activities (painted-over surfaces).
- 875 4.14 Photographic documentation of property conditions, including cooking areas, chemical  
876 storage areas, waste disposal areas, and areas of obvious contamination.
- 877 4.15 If assessment sampling is conducted, it shall be conducted in accordance with Section 6  
878 of this Part 1. Documentation of assessment sampling shall include:
- 879 4.15.1 a description of the sampling procedures used, including sample collection,  
880 handling, and QA/QC;
- 881 4.15.2 documentation of the analytical methods used and laboratory QA/QC  
882 requirements, including the laboratory analytical report and chain-of-custody  
883 documentation; and
- 884 4.15.3 results of sampling, including a description of sample locations and a computer  
885 generated figure illustrating the layout of the building(s) and sample locations and  
886 identification. Sample results shall be presented as reported by the analytical  
887 laboratory, and shall not be adjusted, changed or manipulated in any way.  
888 Spiked samples submitted for analysis shall not be used for purposes of  
889 compliance with these regulations.
- 890 4.16 Documentation of personal property assessment and discussion of items that require  
891 decontamination or disposal, and items that can be released to the owner because the  
892 Consultant has determined, in accordance with Section 5.11.1.4 of this Part 1, that they  
893 are not contaminated.
- 894 4.17 If clearance sampling is conducted during the preliminary assessment, it shall be  
895 conducted in accordance with Section 6 of this Part 1. Documentation of clearance  
896 sampling shall include:
- 897 4.17.1 A description of the sampling procedures used, including sample collection,  
898 handling, and QA/QC.
- 899 4.17.2 Documentation of the analytical methods used and laboratory QA/QC  
900 documentation, including the laboratory analytical report and chain-of-custody  
901 documentation.
- 902 4.17.3 Results of clearance sampling, including a description of sample locations and a  
903 computer generated figure with sample locations and identification, and a copy of  
904 each laboratory report of sample results. Sample results shall be presented as  
905 reported by the analytical laboratory, and shall not be adjusted, changed or  
906 manipulated in any way. Spiked samples submitted for analysis shall not be used  
907 for purposes of compliance with the regulation.
- 908 4.17.4 Documentation of variations from standard practices.
- 909 4.17.5 A certification statement, signed by the Consultant, in substantially the following  
910 form:

911 "I hereby certify that I conducted clearance sampling in accordance with 6 CCR  
 912 1014-3, § 6. I further certify that the cleanup standards established by 6 CCR  
 913 1014-3, § 7 [**choose one:** have/have not] been met as evidenced by testing I  
 914 conducted."

915 4.18 Evidence of Consultant certification under Part 2 of these regulations.

916 4.19 A certification statement, signed by the Consultant, in the following form:

917 "I hereby certify that I conducted a preliminary assessment of the subject property in  
 918 accordance with 6 CCR 1014-3, § 4."

919 4.20 The Consultant shall provide a copy of the Preliminary Assessment Report to the  
 920 Department within 30 days of completing the report.

921 **5.0 Decontamination and Removal Procedures.** Decontamination and removal of contaminated  
 922 materials shall be performed by a Contractor in good standing. Decontamination and removal  
 923 must be overseen at all times by a Decontamination Supervisor. Decontamination Supervisors,  
 924 Decontamination Workers, and Ventilation Contractors shall use appropriate personal protective  
 925 equipment during decontamination activities. The Property owner, in consultation with the  
 926 Contractor, may choose to remove and properly dispose materials at a solid waste landfill, in  
 927 accordance with Section 5.13 of this Part 1, in lieu of decontaminating them. The Contractor shall  
 928 conduct decontamination to reduce the concentration of all contaminants on the Property to or  
 929 below the levels specified in Section 7.0 of this Part 1. Decontamination shall employ techniques  
 930 that result in the physical removal of contamination. The use of decontamination products,  
 931 including, but not limited to, corrosives and caustic agents that chemically treat or alter  
 932 contaminants, rather than physically remove the contaminants, is prohibited. The Contractor  
 933 shall conduct decontamination in accordance with procedures designed to protect workers, future  
 934 occupants, neighbors and the general public, including, but not limited to, the following:

935 5.1 In multi-unit structures and structures with common access hallways, install a negative air  
 936 unit equipped with a HEPA filtration system and operate it throughout the  
 937 decontamination process to minimize dispersal of airborne particulates caused by  
 938 decontamination.

939 5.2 If there is visible dust present, vacuum the entire area using a HEPA vacuum.

940 5.3 Wash and rinse all surfaces that are (or are reasonably expected to be) contaminated.  
 941 The Contractor shall use detergent water solution for washing and potable water for  
 942 rinsing.

943 5.4 All contaminated material that will not or cannot be decontaminated to cleanup standards  
 944 specified in Section 7.0 of this Part 1 shall be removed and disposed. If clearance  
 945 sampling cannot demonstrate that cleanup standards have been met, the material must  
 946 either be re-cleaned until cleanup standards are met or the material must be removed  
 947 and disposed.

948 5.5 Encapsulation of surfaces may only be conducted after clearance sampling has  
 949 demonstrated that cleanup standards have been achieved, as specified in Section 7.0 of  
 950 this Part 1, and as may be required by the governing body as defined in Section 25-18.5-  
 951 101(7), C.R.S.

952 5.5.1 Painted-over surfaces (as defined in Section 2 of this Part 1) that, following  
 953 decontamination, fall in between the cleanup standards of Sections 7.1 and 7.1.3

- 954 of this Part 1 shall be encapsulated or removed. Encapsulation shall be  
 955 performed by applying a coat of oil-based paint using a spray-on method of  
 956 application. Painted-over surfaces that have been decontaminated and are  
 957 below the cleanup standard of Section 7.1 of this Part 1 do not have to be  
 958 encapsulated.
- 959 5.6 Ventilation systems shall be decontaminated or removed by a Ventilation Contractor,  
 960 Decontamination Worker, or Decontamination Supervisor who is trained, certified, and  
 961 equipped to comply with the following protocol for ventilation system decontamination:
- 962 5.6.1 Decontamination of the ventilation system shall either take place after an initial  
 963 gross decontamination of the structure or after complete decontamination of the  
 964 structure.
- 965 5.6.2 At a minimum, the Ventilation Contractor shall perform the following actions, or  
 966 an alternative decontamination procedure that has been approved by the  
 967 Department:
- 968 5.6.2.1 Perform a walk-through of the structure prior to initiation of the project  
 969 to establish a specific plan for decontamination of the ventilation  
 970 system, and to identify components that will be removed.
- 971 5.6.2.2 Remove and dispose all porous components, flexible ducting, glass-  
 972 lined ducting, and any ducting that has been damaged or  
 973 compromised. If such items are part of the structure (e.g., space  
 974 between the studs in a wall is used as a cold air return, or ducting has  
 975 been embedded in a cement slab foundation), render them unusable.  
 976 Embedded ducting must be plugged to a point as far as reachable and  
 977 grouted to the existing floor surface.
- 978 5.6.2.3 Place protective coverings in areas where work is being performed,  
 979 including plastic or drop cloths around each area where the duct is  
 980 penetrated. Utilize controlled containment practices to ensure that  
 981 debris is not dispersed outside the air conveyance system during  
 982 cleaning.
- 983 5.6.2.4 Perform a visual inspection of plenums, interior ductwork surfaces and  
 984 internal components. Inspect all points where lateral lines are attached  
 985 at the boot (vent) and trunk line in attics and crawl spaces for sufficient  
 986 integrity to successfully create negative pressure. Seal or remove  
 987 breaches as necessary to maintain pressure.
- 988 5.6.2.5 Place critical barriers over any hole where ducting has been removed  
 989 from an attic or crawl space immediately upon removal to prevent  
 990 cross contamination and/ or migration of contamination.
- 991 5.6.2.6 Shut off and lock out all air handler units before working on each air  
 992 conveyance system.
- 993 5.6.2.7 Remove and clean or dispose all return air grills, registers and  
 994 miscellaneous non-porous components.

995	5.6.2.8	If structural component are used as duct runs, access or expose non-
996		structural components as necessary to access and decontaminate the
997		duct run or install a new duct run.
998	5.6.2.9	Remove any large debris that has accumulated inside the system and
999		HEPA vacuum the inside of ducting from each vent.
1000	5.6.2.10	Draw a negative pressure on the entire ductwork, using HEPA-
1001		exhausted vacuum filters, throughout the cleaning process. Establish
1002		an appropriate pressure to ensure removal of all loose debris.
1003		Commence vacuuming at the furthest vent from the heating and/or
1004		cooling unit, and proceed toward the unit.
1005	5.6.2.11	Clean the ventilation system, including the outside air intake, supply
1006		ductwork and return air plenums, using pneumatic or electrical
1007		agitators to agitate debris into an airborne state. Additional equipment
1008		may be also be used in the cleaning process, such as brushes, air
1009		lances, and air nozzles.
1010	5.6.2.12	Open and inspect air handling units and clean all components.
1011	5.6.2.13	After decontamination of the system, install new/clean critical barriers
1012		at each access point, and leave in place until the cleanup standards in
1013		Section 7.0 of this Part 1 are achieved throughout the property.
1014	5.6.2.14	Bag and label all debris and other items removed from the ventilation
1015		system, including any filters, and properly dispose of at a solid waste
1016		landfill, in accordance with Section 5.12 of this Part 1.
1017	5.6.2.15	Decontaminate or package for proper disposal all equipment used in
1018		the cleaning of the ventilation system before removing from the
1019		property.
1020	5.6.3	The introduction of any materials or chemicals into a central heat system that are
1021		not approved by the EPA, on the product label, for that specific use is prohibited.
1022		The use of oxidizers or corrosives is also prohibited. EPA approved sealers shall
1023		not be used until after clearance sampling indicates the cleanup standard has
1024		been met in the ventilation system.
1025	5.6.4	Other heating systems, such as electric in-wall heaters, gas wall heaters, and
1026		baseboard heaters, shall be thoroughly decontaminated or removed and
1027		disposed.
1028	5.7	Attics determined to be contaminated above the cleanup standard for limited exposure
1029		areas, as specified in Section 7.1.2 of this Part 1, shall either be removed or
1030		decontaminated; if the property owner chooses to decontaminate the attic, the Contractor
1031		shall use the following procedure, at a minimum:
1032		
1033	5.7.1	Remove all insulation and debris in the attic, and remove all ducting associated
1034		with bathroom and kitchen exhaust vents.
1035		
1036	5.7.2	Establish critical barriers on the lower side (ceiling side) of the vent openings. All
1037		critical barriers must be maintained in good condition until the entire structure has
1038		been decontaminated to meet cleanup criteria.
1039		

- 1040  
1041 5.7.3 Thoroughly HEPA vacuum the attic.  
1042  
1043 5.7.4 Decontaminate attic surfaces using a detergent water wash followed by rinsing.  
1044 Control and contain excess decontamination liquids in a manner that will prevent  
1045 the build-up of free liquids or cause damage to building materials.  
1046  
1047 5.7.5 Following decontamination, the Consultant shall sample the attic area in  
1048 accordance with the clearance sampling requirements of Section 6 of this Part 1  
1049 to determine if the residual contamination levels exceed the cleanup standard for  
1050 limited exposure areas.  
1051  
1052 5.7.6 If the clearance sampling indicates the area is still above the cleanup standard,  
1053 the Contractor shall either conduct additional decontamination as provided  
1054 above, or remove the contaminated material. If additional decontamination is  
1055 conducted, the Consultant shall repeat clearance sampling. Decontamination is  
1056 not complete until contaminated materials have either been removed or  
1057 decontaminated to meet the standard.  
1058  
1059 5.8 Crawl spaces determined to be contaminated above the cleanup standard for limited  
1060 exposure area, as specified in Section 7.1.2 of this Part 1, shall be decontaminated using  
1061 the following procedure, at a minimum:  
1062  
1063 5.8.1 Remove all insulation and debris.  
1064  
1065 5.8.2 Remove existing vapor barrier, if present, using dust control measures to prevent  
1066 cross contamination.  
1067  
1068 5.8.3 If no vapor barrier is present, or following removal of an existing vapor barrier,  
1069 install a layer of 6 mil polyethylene sheeting, or equivalent, during  
1070 decontamination to capture decontamination fluids. Excess decontamination  
1071 liquids shall be collected, containerized and disposed in accordance with Section  
1072 5.12.3 of this Part 1. The polyethylene sheeting shall be removed and disposed  
1073 after the decontamination process is complete.  
1074  
1075 5.8.4 If the ducting for the central heat system is removed, install critical barriers on the  
1076 upper side (floor side) of the vent holes. All critical barriers shall be maintained in  
1077 good condition until the entire structure has been decontaminated and meets  
1078 cleanup criteria.  
1079  
1080 5.8.5 HEPA vacuum all surfaces except for dirt floors.  
1081  
1082 5.8.6 Decontaminate all surfaces, other than dirt floors, using a detergent water wash  
1083 followed by rinsing.  
1084  
1085 5.8.7 If it is determined that chemicals have been disposed onto the dirt floor, remove  
1086 all contaminated soil and dispose offsite, in accordance with Section 5.12 of this  
1087 Part 1. The extent of soil removal shall be based on the visual observations and  
1088 field screening in accordance with Section 6 of this Part 1.  
1089  
1090 5.8.8 After completing steps 1 through 7, sample surfaces, other than dirt floors, in  
1091 accordance with the clearance sampling requirements of Section 6 of this Part to  
1092 determine if contaminant concentrations exceed the cleanup standard.  
1093

- 1094 5.8.9 If the clearance sampling indicates the area is above the cleanup standard,  
 1095 conduct additional decontamination. Decontamination is not complete until  
 1096 contaminated material is removed or clearance sampling indicates the cleanup  
 1097 standard has been met.
- 1098 5.8.10 If the vapor barrier was removed, a new barrier shall be installed above the dirt  
 1099 floor unless determined by the Consultant, in consultation with the owner, to be  
 1100 unnecessary. The vapor barrier shall be as required by local building code.  
 1101
- 1102 5.8.11 If there was no vapor barrier, but the crawlspace was contaminated above the  
 1103 cleanup standard, remove the top 2 inches of dirt and dispose in a solid waste  
 1104 landfill.  
 1105
- 1106 5.9 Flush plumbing systems connected to the sanitary sewer with potable water to eliminate  
 1107 any residual chemicals.  
 1108
- 1109 5.10 If assessment sampling demonstrated that methamphetamine lab wastes have been  
 1110 disposed of into an OWTs, pump the system and characterize and dispose the wastes in  
 1111 accordance with Sections 5.12, and 6.6.4 of this Part 1.
- 1112 5.11 Personal Property
- 1113 5.11.1 Personal property must either be:
- 1114 5.11.1.1 decontaminated to the cleanup standards specified in Section 7.0 of  
 1115 this Part 1, as demonstrated through clearance sampling of the  
 1116 personal property;
- 1117 5.11.1.2 decontaminated as provided in Sections 5.9.2 and 5.9.3;
- 1118 5.11.1.3 properly disposed in accordance with Section 5.9 of this Part 1; or
- 1119 5.11.1.4 determined not to be contaminated as follows:
- 1120 5.11.1.4.1 the personal property in question, or other personal property  
 1121 of similar material and located in the same room, was  
 1122 sampled in accordance with the clearance level sampling  
 1123 protocols and other requirements of Section 6 of this Part 1,  
 1124 and determined to be below the cleanup standards specified  
 1125 in Section 7.0 of this Part 1; or
- 1126 5.11.1.4.2 the personal property in question was located in a room that  
 1127 was determined to be below the cleanup standards specified  
 1128 in Section 7.0 of this Part 1 after being sampled in  
 1129 accordance with the clearance level sampling protocols and  
 1130 other requirements of Section 6 of this Part 1; and in the  
 1131 Consultant's judgment, the item is unlikely to have been  
 1132 contaminated from exposure elsewhere in the property, given  
 1133 the nature of the item, the time the item was introduced to the  
 1134 property (if known), and any other relevant factors or  
 1135 information.
- 1136 5.11.2 Hard non-porous household goods (including ceramics, hard plastics,  
 1137 electronics, metals and glass) that show no signs of having been used during the

meth cooking process (e.g., are not etched, stained, or emitting odors) may be decontaminated by washing them at least twice using a detergent-water solution and rinsing after each washing with potable water. Only the exterior of electronic goods such as televisions, computers, or home audio and video equipment, must be washed unless such items are being recycled, in which case they must be dunk-washed in accordance with Section 5.12.2. Eligible items decontaminated pursuant to this section do not require clearance sampling. As used in this section, the term "household goods" excludes major appliances such as ranges, cooktops, ovens, microwaves and refrigerators.

5.11.3 Clothing and linens that are not obviously contaminated may be laundered on-site in accordance with the following conditions:

5.11.3.1 clothing and linens must be handled in a manner that prevents cross-contamination of uncontaminated areas;

5.11.3.2 clothing and linens must be washed at least three consecutive times with detergent using a standard washing machine, without being dried in between washes.

5.11.3.3 Clothing and linens that are decontaminated in accordance with this Section 5.9.3 do not require clearance sampling.

5.12 Waste management shall be conducted in accordance with the Colorado Hazardous Waste Regulations (6 CCR 1007-3) and the Colorado Solid Waste Regulations (6 CCR 1007-2).

5.12.1 Non-hazardous debris and contaminated material generated during decontamination of methamphetamine-affected properties shall be managed as solid waste.

5.12.2 Electronic devices that are banned from disposal under Section 25-15-303, C.R.S. shall be recycled in accordance with the Colorado Solid Waste Regulations (6 CCR 1007-2). If the device is to be recycled and was stored in a room that is determined to be contaminated, the device shall be dunk-washed at least 3 times, or dismantled and HEPA vacuumed, prior to being recycled.

5.12.3 Wash water shall be containerized for offsite disposal, or may be disposed to the sanitary sewer with prior approval from the POTW. A pH test shall be conducted to determine if neutralization of the wash water is necessary prior to disposal.

5.12.4 Wastes removed from OWTSS shall be disposed of as either solid or hazardous waste based on results of laboratory analysis as described in Section 6 of this Part 1.

5.12.5 Methamphetamine lab wastes and precursor chemicals discovered at the property shall be disposed of as either solid or hazardous waste based on results of laboratory analysis as required by 6 CCR 1007-3 Section 261.

5.13. Any demolition of all or part of a structure shall be conducted in accordance with all local, State and Federal requirements. All material from demolition or removal shall be disposed in a solid waste landfill.

- 1179 5.14 Septic tank contents containing methamphetamine lab waste that have been determined  
 1180 to be a hazardous waste shall be disposed of in accordance with the Colorado  
 1181 Hazardous Waste Regulations (6 CCR 1007-3). Septic tank contents containing  
 1182 methamphetamine lab waste that have been determined not to be hazardous waste shall  
 1183 be disposed in accordance with the Colorado Solid Waste Regulations (6 CCR 1007-2),  
 1184 and local requirements.
- 1185 5.15 If sampling provides evidence that hazardous waste has been disposed of in the OWTS,  
 1186 an investigation of potential environmental contamination shall be conducted. The  
 1187 investigation and cleanup of soil, surface water and groundwater contamination resulting  
 1188 from disposal of methamphetamine lab wastes into an OWTS shall be conducted under  
 1189 an approved plan in accordance with either the Colorado Hazardous Waste Regulations  
 1190 (6 CCR 1007-3), or the Colorado Solid Waste Regulations (6 CCR 1007-2), as  
 1191 appropriate based on sampling results, and with Water Quality Control Commission  
 1192 Regulations 31 and 41. Specific investigation requirements shall be determined through  
 1193 consultation with the Department's Hazardous Materials and Waste Management  
 1194 Division. Guidance on soil and groundwater investigations can be found in the  
 1195 Department of Public Health and Environment, Hazardous Materials and Waste  
 1196 Management Division (May 2002), Corrective Action Guidance Document and the EPA  
 1197 Environmental Investigations Standard Operating Procedures and Quality Assurance  
 1198 (EISOPQA) Manual.
- 1199 5.16 If surface soil sampling indicates that soil has been impacted by methamphetamine lab  
 1200 waste, additional investigation and remediation shall be conducted under an approved  
 1201 plan in accordance with the Colorado Hazardous Waste Regulations (6 CCR 1007-3) or  
 1202 the Colorado Solid Waste Regulations (6 CCR 1007-2).
- 1203 5.17 The investigation and cleanup of soil, surface water and groundwater contamination shall  
 1204 be conducted in accordance with either the Colorado Hazardous Waste Regulations, or  
 1205 the Colorado Solid Waste Regulations, as appropriate based on sampling results, and in  
 1206 accordance with Water Quality Control Commission Regulations 31 and 41 (5 CCR 1002-  
 1207 31 and 5 CCR 1002-41). Occurrences of outdoor contamination shall be reported to the  
 1208 Department within 72 hours of discovery.
- 1209 **6.0 Sampling and Analytical Procedures.**
- 1210 6.1 General Requirements
- 1211 6.1.1 Only Consultants in good standing may conduct sampling under these  
 1212 regulations.
- 1213 6.1.2 To prevent any real or potential conflicts of interest, a Consultant who is retained  
 1214 to conduct a screening level assessment, preliminary assessment, or clearance  
 1215 sampling at a given property must be independent of the Contractor who is  
 1216 retained to decontaminate the property.
- 1217 6.1.3 The following sample collection procedures shall be followed for screening level  
 1218 sampling, preliminary assessment sampling and clearance sampling, except as  
 1219 provided in Section 6.8.2 of this Part 1.
- 1220 6.1.3.1 Wipe sampling shall be used to determine the extent of  
 1221 methamphetamine contamination on all surfaces at all  
 1222 methamphetamine-affected properties, and at all properties that are  
 1223 undergoing a screening-level assessment



- 1229 6.1.3.2. Wipe sampling shall be used to determine the extent of lead  
1230 contamination on all surfaces at properties whenever the preliminary  
1231 assessment indicates the P2P method of methamphetamine  
1232 manufacture was used on the property.
- 1233 6.1.3.3 Wipe sampling shall be used to determine the extent of iodine  
1234 contamination whenever there is visible evidence of iodine staining on  
1235 surfaces that will not be removed.
- 1236 6.1.3.4 Vacuum sampling may, at the Consultant's discretion, be used instead  
1237 of wipe sampling to determine the extent of methamphetamine, iodine  
1238 or lead contamination on fabrics or textiles only.
- 1239 6.1.3.5 Vapor sampling shall be used to determine the extent of mercury  
1240 contamination whenever circumstances indicate the P2P method of  
1241 methamphetamine manufacture was used on the property.
- 1242  
1243 6.2 Discrete Wipe Sample Collection Procedures. The following procedure shall be used for  
1244 collecting discrete wipe samples:
- 1245 6.2.1 Sample media shall consist of 2x2 inch wipes made of one of the following:
- 1246 6.2.1.1 Cotton gauze material.
- 1247 6.2.1.2 4-ply non-woven cotton/polyester blend.
- 1248 6.2.1.3 Tightly knitted continuous filament polyester.
- 1249  
1250 6.2.2 Delineate a 100 cm<sup>2</sup> area on the surface to be sampled, either by attaching a  
1251 physical template to the surface (being careful not to touch the area within the  
1252 template), or by an equivalently reliable and accurate method. The area within  
1253 the template (i.e., the sample area) shall be 100 cm<sup>2</sup>. Physical templates may  
1254 not be re-used.
- 1255  
1256 6.2.3 Prepare a rough sketch of the area(s) to be sampled and indicate sample  
1257 location(s).
- 1258  
1259 6.2.4 Wet the sample media with isopropanol to enhance collection efficiency.
- 1260 6.2.5 Use a new set of clean, non-powdered impervious gloves for each sample to  
1261 avoid contamination of the sample media by previous samples and to prevent  
1262 contact with the substance.
- 1263 6.2.6 Press the sample media down firmly, but not excessively, with the fingers, being  
1264 careful not to touch the sample surface with the thumb. Blot rough surfaces  
1265 uniformly instead of wiping. Wipe smooth surfaces as described in the next  
1266 section below.
- 1267 6.2.7 Wiping shall be done by one of the following methods:
- 1268 6.2.7.1 Square method: Start at the outside edge and progress toward the  
1269 center of the surface area by wiping in concentric squares of  
1270 decreasing size.
- 1271 6.2.7.2 "S" method: Wipe horizontally from side-to-side in an overlapping "S"-  
1272 like pattern as necessary to completely cover the entire wipe area.
- 1273

- 1274 6.2.8 Without allowing the sample media to come into contact with any other surface,  
1275 fold the sample media with the sampled side in.
- 1276 6.2.9 Use the same sample media to repeat the sampling of the same area using the  
1277 same method. If using the "S" method, the second pass shall be sampled by  
1278 wiping with overlapping "S"-like motions in a top-to-bottom direction.
- 1279 6.2.10 Fold sampled side in. Using the same sample media, sample the same area a  
1280 third time. The third pass shall be sampled by wiping using the method not  
1281 previously used (i.e., use the square method if the "S" method was originally  
1282 used).
- 1283 6.2.11 Fold the sample media over again so that the sampled side is folded in. Place the  
1284 sample media in a sample container, cap and number it, and note the number at  
1285 the sample location on the sketch. Remove and discard impervious gloves.  
1286 Include notes with the sketch giving any further description of the sample,  
1287 including sample name and time of collection. Photograph each sample location.
- 1288 6.2.12 At least one field blank, prepared and handled in the same fashion but without  
1289 wiping, shall be submitted for every 10 samples collected, according to the  
1290 following:
- 1291 6.2.12.1 To collect a field blank, remove a wipe from the wrapper with a new  
1292 glove, shake the wipe open, refold in the same manner as during the  
1293 sampling procedure, and then insert the wipe into the sample  
1294 container.  
1295
- 1296 6.2.12.1 Repeat this procedure for multiple aliquots when collecting a  
1297 composite field blank.
- 1298 6.2.12.2 For projects with fewer than 10 samples collected, the last sample  
1299 collected shall be the field blank.
- 1300 6.2.12.3 For projects with greater than 10 samples collected, sample 11 shall  
1301 be a field blank, every 10th subsequent sample shall be a field blank,  
1302 and the last sample of any sample group with fewer than 10 samples  
1303 shall be a field blank.
- 1304 6.2.12.4 Field blanks shall be representative of the majority of samples  
1305 collected for every sample group (i.e., discrete or composite).
- 1306 6.2.13 Follow sample handling procedures as specified by the analytical method listed  
1307 in Section 6.12 of this Part 1.  
1308
- 1309 6.2.14 A Chain of Custody Record shall be maintained from the time of sample  
1310 collection until final disposition. Sample(s) collected from a single  
1311 methamphetamine-affected property shall be documented on one Chain of  
1312 Custody Record. Every transfer of custody shall be noted and signed for and a  
1313 copy of the record shall be kept by each individual who has signed it. Samples  
1314 shall be sealed, labeled, and secured. All samples collected shall be transported  
1315 directly to the laboratory. Shipping samples overnight is considered direct  
1316 transport, and the shipping label shall be considered part of the Chain of Custody  
1317 Record. All sample documents shall be retained for the project record and  
1318 included in the project reports. At a minimum, the Chain of Custody Record shall  
1319 include the following:  
1320  
1321

1322	6.2.14.1	Property address
1323	6.2.14.2	Sample name and contact information
1324	6.2.14.3	Sample identification number
1325	6.2.14.4	Sample area
1326	6.2.14.5	Number of sample aliquots
1327	6.2.14.6	Number of containers for each sample
1328	6.2.14.7	Sample collection time and date
1329	6.2.14.8	Sample matrix
1330	6.2.14.9	Requested analysis
1331	6.2.14.10	Sample preservatives, if applicable
1332	6.2.14.11	Signature and date for each person relinquishing or receiving sample
1333		custody
1334		
1335	6.2.15	Painted-over surfaces. The concentration of methamphetamine present below a
1336		painted-over surface (as defined in Section 2 of this Part 1) shall be estimated by
1337		one of the following methods:
1338		
1339	6.2.15.1.1	Collect wipe samples from similar surfaces within the same room
1340		that were not painted after contamination was introduced, or
1341	6.2.15.1.2	Sample the painted over surface as set forth in 6.2.1 – 6.2.14, except
1342		that methanol shall be used as the wetting agent for the sampling
1343		media to acquire a representative sample from beneath the painted-
1344		over surface.
1345		
1346	6.3	<u>Composite Wipe Sample Collection Procedures.</u> When collecting composite samples,
1347		the procedure outlined in Section 6.2 above for discrete samples shall be used for the
1348		collection of each aliquot comprising the composite sample, with the following exceptions:
1349		
1350	6.3.1	A single pair of gloves may be used to collect each aliquot that will be part of a
1351		composite sample. However, a new pair of gloves must be used for each set of
1352		composite samples.
1353	6.3.2	The sample media from all individual aliquots that make up a composite sample
1354		must be placed in one sample container.
1355	6.3.3	A separate piece of sample media shall be used for each aliquot.
1356	6.3.4	No more than 4 aliquots may be combined in a single composite sample.
1357	6.3.5	All aliquots in a single composite sample collected from personal property must
1358		be collected from similar material.
1359	6.3.6	All individual aliquots must be collected from 100 cm <sup>2</sup> sampling areas.
1360		
1361	6.4	<u>Vacuum Sample collection procedures.</u> At the Consultant's discretion, vacuum sampling
1362		may be used to determine the extent of contamination on fabrics and textiles, including
1363		carpeting, drapery, upholstery, clothing, and other fabric goods. Vacuum samples shall
1364		be collected in accordance with procedures for sample collection described in Section 9
1365		of the ASTM International Method D5756-02, <u>Standard Test Method for Microvacuum</u>

Sampling and Indirect Analysis of Dust by Transmission Electron Microscopy for Asbestos Mass Concentration as incorporated in Section 9 of this Part 1.

- 6.5 Vapor Sample collection procedures. If the preliminary assessment indicates the phenyl-2-propanone (P2P) method of methamphetamine manufacturing was used, vapor samples for mercury shall be collected in accordance with the procedures for sample collection described in NIOSH Method 6009 as incorporated in Section 9 of this Part 1.
- 6.6 OWTS Sampling. If the property has an OWTS, the Consultant shall conduct field screening, and if necessary sample collection from the OWTS to confirm or deny the presence of methamphetamine lab waste, and to ensure proper disposal of any methamphetamine lab waste identified.
- 6.6.1 Field Screening. Field screening of septic tanks shall be conducted if there is evidence that methamphetamine lab wastes may have been disposed of into an OWTS. Evidence of methamphetamine lab wastes disposal into an OWTS includes, but is not limited to, the following:
- 6.6.1.1 Witness statements;
- 6.6.1.2 Stained or etched sinks, bathtubs, toilets;
- 6.6.1.3 Chemical odors coming from the OWTS plumbing or tank;
- 6.6.1.4 Visual observations of unusual conditions within the septic tank ("dead tank"); or
- 6.6.1.5 stressed or dead vegetation in a drain field.
- 6.6.2 Initial field screening shall consist of the following:
- 6.6.2.1 Monitoring the septic tank for volatile organic compounds (VOCs) using a photo ionization detector (PID) or a flame ionization detector (FID).
- 6.6.2.2 Testing the pH of liquid in the septic tank using pH paper or a pH meter.
- 6.6.2.3 Additional field screening may be conducted, at the discretion of the Consultant, to further investigate the possible presence of methamphetamine lab waste.
- 6.6.3 Sample Collection. If field screening indicates that the OWTS has not been impacted by methamphetamine lab wastes, the OWTS may, in the Consultant's discretion, be presumed to be uncontaminated, and no further sampling is required. If field screening indicates that the OWTS has been impacted by methamphetamine lab wastes, samples shall be collected from the septic tank to determine if the liquids in the tank contain a hazardous waste. Samples shall be collected according to the requirements of the analytical method being used and the following protocol:
- 6.6.3.1 Prior to sampling, determine whether the tank consists of one or two chambers through records review, visual inspection of the tank or by sufficiently excavating the septic tank.

- 1414 6.6.3.2 Samples from single chamber tanks shall be collected from the  
1415 baffle on the outlet end of the tank.
- 1416 6.6.3.3 Samples from dual chamber tanks shall be collected from the  
1417 baffle on the outlet end of chamber one.
- 1418 6.6.3.4 Samples must be representative of the wastes found in the  
1419 septic tank. Sampling procedures may include the use of drum thieves,  
1420 sludge judges or equivalent equipment. The instructions for the correct  
1421 usage of the sampling device shall be followed.
- 1422 6.6.3.5 Remove access cover from the first (or only) chamber and locate  
1423 outlet baffle.
- 1424 6.6.3.6 Move any floating surface matter away from the insertion point of  
1425 the sampling device. Do not collect any matter in the sampling device.
- 1426 6.6.3.7 Insert the sampling device into the tank, lowering it until it hits the  
1427 bottom.
- 1428 6.6.3.8 Trap the sample inside the sampling device.
- 1429 6.6.3.9 Remove the sampling device and fill the laboratory supplied  
1430 sample containers. The specific volume and type of sample container  
1431 will be determined based on the type of analysis desired. For VOC  
1432 analysis, two 40ml vials shall be filled, leaving no headspace.
- 1433 6.6.3.10 Replace access cover at the completion of sample collection.
- 1434 6.6.3.11 Samples may be collected in laboratory preserved bottles, or in  
1435 unpreserved bottles. If the samples are collected in unpreserved  
1436 bottles, the laboratory must be notified that the samples are  
1437 unpreserved.
- 1438 6.6.3.12 Sample containers shall be placed in a cooler with enough ice or ice  
1439 packs to maintain a temperature of 4° C.
- 1440 6.6.3.13 A Chain of Custody Record shall be maintained from the time of  
1441 sample collection until final disposition. Every transfer of custody shall  
1442 be noted and signed for and a copy of the record shall be kept by each  
1443 individual who has signed it. Samples shall be sealed, labeled, and  
1444 secured. All samples collected shall be transported directly to the  
1445 laboratory. Shipping samples overnight is considered direct transport,  
1446 and the shipping label shall be considered part of the Chain of Custody  
1447 Record. All sample documents shall be retained for the project record  
1448 and included in project reports.
- 1449 6.6.4 Waste Characterization. The contents of septic tanks that contain waste from  
1450 methamphetamine labs are solid wastes. Prior to disposal, a hazardous waste  
1451 determination must be made in accordance with 6 CCR 1007-3 Section 261.20  
1452 through 261.24. The following analyses, as incorporated in Section 9 of this Part  
1453 1, shall be conducted to determine if an OWTS has been impacted by  
1454 methamphetamine labs wastes, and if the septic tank contains a characteristic  
1455 hazardous waste:  
1456  
1457

1458	6.6.4.1	VOCs using Method 8260B in "Test Methods for the Evaluation
1459		of Solid Waste, Physical/Chemical Methods," EPA Publication SW-
1460		846.
1461	6.6.4.2	Ignitability/flash point by a Pensky-Martens Closed Cup Tester,
1462		using the test method specified in ASTM Standard D-93-79 or D-93-80
1463		(or Method 1010A in EPA SW-846), or Setaflash Closed Cup Tester,
1464		using the test method specified in ASTM standard D-3278-78 (or
1465		Method 1020B in EPA SW-846).
1466	6.6.4.3	Corrosivity as determined by Method 9040C or Method 1110A in
1467		EPA Publication SW-846.
1468	6.6.4.4	Reactivity using Method 9014 and Method 9034 in EPA
1469		Publication SW-846.
1470		
1471	6.7	Screening level sampling protocols for buildings.
1472		
1473	6.7.1	For buildings other than multi-unit structures, a minimum of two (2) 4-aliquot
1474		composite samples must be collected, with at least one aliquot being collected
1475		from each room. At least one composite sample must include an aliquot from the
1476		cold air return of a heating system, if it is a forced air system. All exhaust fans
1477		(kitchen, bathrooms, or whole house fan) must also be sampled.
1478		
1479	6.7.2	For multi-unit structures, at least ten (10) percent of units that do not exhibit signs
1480		of an illegal drug laboratory shall be evaluated through the collection of at least
1481		one 4-aliquot composite sample per unit, with at least one aliquot being drawn
1482		from each room in the unit. At least one composite sample must include an
1483		aliquot from the cold air return of a heating system, if it is a forced air system. All
1484		exhaust fans (kitchen, bathrooms, or whole house fan) in sampled units must
1485		also be sampled.
1486		
1487	6.8	Assessment level sampling protocols for buildings and personal property.
1488		
1489	6.8.1	Except as provided in Section 6.8.2 below, the Consultant shall conduct sampling
1490		for methamphetamine that meets the clearance sampling level protocols of
1491		Section 6.9 in all rooms of a methamphetamine-affected property as part of the
1492		preliminary assessment.
1493		
1494	6.8.2	The Consultant may determine that some (or all) rooms should be deemed to be
1495		contaminated based on data other than assessment sampling. Personal property
1496		located in rooms that are deemed to be contaminated is also deemed to be
1497		contaminated. Rooms that are deemed to be contaminated do not need to be
1498		sampled as part of the preliminary assessment, nor do their contents. However,
1499		the Consultant may choose to conduct additional sampling of those rooms or
1500		their contents to inform decontamination decisions.
1501		
1502	6.9	<u>Clearance level sampling protocols for buildings and personal property.</u> The consultant
1503		shall conduct clearance sampling of all structures on any property that meets the
1504		definition of a methamphetamine affected property to verify that cleanup standards have
1505		been met. Samples shall be collected according to the following criteria:
1506		
1507	6.9.1	Except as provided in 6.9.1.1, at least 400 cm <sup>2</sup> shall be sampled from every
1508		room.

- 1509 6.9.1.1 For buildings and structures that have had their internal walls removed,  
1510 sampling shall be conducted in accordance with 6.9.2 and 6.9.3.
- 1511 6.9.2 At least 800 cm<sup>2</sup> of total surface area must be sampled for any single  
1512 methamphetamine-affected property.
- 1513 6.9.3 For rooms greater than 500 ft<sup>2</sup> an additional 100 cm<sup>2</sup> shall be sampled for each  
1514 additional 500 ft<sup>2</sup> or fraction thereof.
- 1515 6.9.4 For buildings and structures that have forced air ventilation systems, at least 400  
1516 cm<sup>2</sup> of surface area of the ventilation system shall be sampled. Samples shall be  
1517 collected from within the heat exchange unit, inside each cold air return, and from  
1518 inside the vents closest and furthest from the heating unit. Additional locations  
1519 within the ventilation system may be sampled at the Consultant's discretion.
- 1520 6.9.5 For buildings and structures with non-ducted heating or cooling systems that  
1521 circulate indoor air, one discrete sample shall be collected from each heating or  
1522 cooling unit.
- 1523 6.9.6 Composite samples may be used for clearance sampling of rooms and personal  
1524 property, provided all aliquots comprising a composite sample come from the  
1525 same room.
- 1526 6.9.7 The interior of major appliances (microwaves, refrigerators, freezers, ovens and  
1527 dryers) must be sampled using discrete samples. The exterior of major  
1528 appliances may be sampled using composite samples.
- 1529 6.9.8 Items in a closet that is less than 75 ft.<sup>2</sup> may be sampled separately from items in  
1530 the adjoining room (e. g., clothing from a bedroom closet may be sampled  
1531 separately from textiles in the bedroom).
- 1532 6.9.9 A composite sample of personal property is considered representative of  
1533 contaminant levels on all personal property of that type material within the same  
1534 room. Should analysis of composite samples from multiple items indicate  
1535 methamphetamine levels in excess of the cleanup standard, all items from which  
1536 the composite sample was comprised, and all items of that type material within  
1537 the same room will be considered to be in excess of the cleanup standard,  
1538 unless a discrete sample of an individual item demonstrates that the cleanup  
1539 standard has been met on that item.
- 1540 6.9.10 For structures that have no rooms, the Consultant shall sample at least 100 cm<sup>2</sup>  
1541 for every 500 ft<sup>2</sup> of surface area.
- 1542 6.9.11 Locations of clearance samples shall be based on information gathered during  
1543 the preliminary assessment. Samples shall be collected from surfaces that have  
1544 a reasonable potential for exposure from:
- 1545 6.9.11.1 Areas expected to have the highest levels of contamination, such as  
1546 cooking areas, chemical storage areas, and waste disposal areas.  
1547
- 1548 6.9.11.2 Areas where contamination may have migrated, such as adjacent  
1549 rooms or units, common areas, shared attics, shared crawl spaces  
1550 and shared ventilation systems.
- 1551 6.9.11.3 Personal property that will not be disposed, except that hard non-  
1552 porous household goods including ceramics, hard plastics, metals

- 1553 and glass that show no signs of having been used during the meth  
 1554 cooking process (e.g., are not etched, stained, or emitting odors) do  
 1555 not require clearance sampling if they are washed at least two times  
 1556 using a detergent-water solution. As used in this section, the term  
 1557 "household goods" excludes major appliances such as ranges,  
 1558 cooktops, ovens, microwaves and refrigerators.
- 1559 6.9.11.4 Clothing and linens, except that no sampling is required for:  
 1560
- 1561 6.9.11.4.1.1 clothing or linens that will immediately be  
 1562 disposed at a solid waste landfill; or
- 1563 6.9.11.4.1.2 clothing or linens that are not obviously  
 1564 contaminated, provided such items are managed in  
 1565 accordance with 5.11.3.  
 1566
- 1567 6.10 Clearance level sampling protocols for vehicles.  
 1568
- 1569 6.10.1 The Consultant shall sample a minimum of 400 cm<sup>2</sup> of the interior surface of the  
 1570 vehicle.  
 1571
- 1572 6.10.2 The Consultant shall sample an additional 100 cm<sup>2</sup> for every 50 square feet of  
 1573 structural floor space for any large vehicle, such as a recreational vehicle, motor  
 1574 home, trailer, or camper.
- 1575 6.10.3 Composite sampling of vehicles is allowed, provided that all aliquots making up  
 1576 an individual composite are taken from the same vehicle.  
 1577
- 1578 6.11 Surface Soil Sampling.
- 1579 6.11.1 The following procedures shall be followed when conditions indicate the potential  
 1580 for soil contamination:  
 1581
- 1582 6.11.1.1 Samples for volatile organic compound (VOC) and semi-volatile  
 1583 organic compound (SVOC) analysis must be collected as discrete  
 1584 samples.  
 1585
- 1586 6.11.1.2 Samples for methamphetamine and non-volatile compounds may  
 1587 either be collected as discrete samples or composite samples.  
 1588
- 1589 6.11.2 Discrete surface soil samples shall be collected as follows:  
 1590
- 1591 6.11.2.1 At each sampling location, clear an area approximately 12 inches in  
 1592 diameter of surface vegetation and debris.  
 1593
- 1594 6.11.2.2 Use a decontaminated stainless steel spoon to collect the surface soil  
 1595 to a depth of six inches (i.e., 0-6 inch sample). A decontaminated  
 1596 stainless steel pick may be used as needed to loosen the soil. To the  
 1597 extent possible, eliminate gravel size or larger particles or debris based  
 1598 on visual observation. Be sure to collect sufficient sample volume to  
 1599 meet analytical requirements.
- 1600 6.11.2.3 Use laboratory supplied or clean unused sample containers. If VOC  
 1601 and SVOC analyses are to be performed, immediately fill the VOC and  
 1602 SVOC sample containers fully to eliminate head space. Tightly seal the



- 1603 containers with the appropriate lids. Follow sample handling  
 1604 procedures as specified by the analytical method listed in Section 6.12  
 1605 of this Part 1.
- 1606 6.11.2.4 A Chain of Custody Record shall be maintained from the time of  
 1607 sample collection until final disposition. Sample(s) collected from a  
 1608 single methamphetamine-affected property shall be documented on  
 1609 one Chain of Custody Record. Every transfer of custody shall be  
 1610 noted and signed for and a copy of the record shall be kept by each  
 1611 individual who has signed it. Samples shall be sealed, labeled, and  
 1612 secured. All samples collected shall be transported directly to the  
 1613 laboratory while maintaining the required temperature controls as  
 1614 specified by the analytical method. Shipping samples overnight is  
 1615 considered direct transport, and the shipping label shall be considered  
 1616 part of the Chain of Custody Record. All sample documents shall be  
 1617 retained for the project record and included in the project reports.
- 1618 6.11.2.5 Decontaminate the sampling equipment prior to collecting additional  
 1619 samples.
- 1620 6.11.3 Each composite surface soil sample shall be collected as follows:
- 1621 6.11.3.1 Composite sampling shall consist of the collection of a 5-aliquot or 10-  
 1622 aliquot composite soil sample collected from a grid with a maximum  
 1623 surface area of 100 square feet. Aliquot locations shall be evenly  
 1624 spaced throughout the entire grid.
- 1625 6.11.3.2 Prior to sampling, calculate the volume of sample material to be  
 1626 collected for each aliquot to ensure that the necessary amount of  
 1627 composite sample will be obtained. Required sample volumes shall be  
 1628 those specified by the analytical method listed in Section 6.12 of this  
 1629 Part 1. For a given composite sample, the volume of each aliquot  
 1630 must be the same, and must equal  $1/n$  of the required composite  
 1631 sample volume, where  $n$  equals the number of aliquot samples making  
 1632 up the composite sample.
- 1633 6.11.3.3 At each aliquot sample location, clear an area approximately 12 inches  
 1634 in diameter of surface vegetation and debris.
- 1635 6.11.3.4 Use a decontaminated stainless steel spoon to collect surface soil to a  
 1636 depth of six inches. A decontaminated stainless steel pick may be  
 1637 used as needed to loosen the soil. To the extent possible, eliminate  
 1638 gravel-size or larger particles and debris based on visual observation.  
 1639 Be sure to collect a sufficient volume of aliquot sample. The volume of  
 1640 aliquot collected at each location must be the same.
- 1641 6.11.3.5 Place the aliquot into a decontaminated stainless steel mixing bowl.
- 1642 6.11.3.6 Repeat Steps 3 through 5 at each aliquot sample location for a given  
 1643 composite sample, adding each successive aliquot sample to the  
 1644 mixing bowl.
- 1645 6.11.3.7 Thoroughly mix the sample material in the stainless steel bowl using a  
 1646 decontaminated stainless steel spoon. To homogenize, divide the  
 1647 sample into four quarters and mix each quarter, then combine the four  
 1648 quarters and mix the entire sample. Place the mixture into appropriate  
 1649 containers with the appropriate lids. Follow sample handling  
 1650 procedures as specified by the analytical method listed in Section 6.12  
 of this Part 1.

- laboratory-supplied or clean unused sample containers. Tightly seal the containers with the appropriate lids. Follow sample handling procedures as specified by the appropriate analytical method listed in Section 6.12 of this Part 1.
- 6.11.3.8 A Chain of Custody Record shall be maintained from the time of sample collection until final disposition. Sample(s) collected from a single methamphetamine-affected property shall be documented on one Chain of Custody Record. Every transfer of custody shall be noted and signed for and a copy of the record shall be kept by each individual who has signed it. Samples shall be sealed, labeled, and secured. All samples collected shall be transported directly to the laboratory. Shipping samples overnight is considered direct transport, and the shipping label shall be considered part of the Chain of Custody Record. All sample documents shall be retained for the project record and included in the project reports.
- 6.11.3.9 Decontaminate the sampling equipment prior to collecting additional samples.
- 6.11.4 If surface soil sampling indicates that soil has been impacted by methamphetamine lab waste, additional investigation and remediation shall be conducted under an approved plan in accordance with the Colorado Hazardous Waste Regulations (6 CCR 1007-3) or the Colorado Solid Waste Regulations (6 CCR 1007-2).
- 6.12 Analytical Methods. The following analytical methods, as incorporated in Section 9 of this Part 1, shall be used, as applicable, to determine the concentrations of chemicals in samples collected during screening level assessments, preliminary assessments, or clearance sampling. Sample handling, including labeling, preservation, documentation, and chain-of-custody, shall be conducted consistent with the requirements of the analytical method being used. Laboratory QA/QC practices, including the use of matrix spikes and matrix spike duplicates if required by the analytical method, shall be conducted in accordance with the specified method requirements. Analytical methods shall be based on the compound being sampled for.
- 6.12.1 Analysis of wipe samples and vacuum samples for methamphetamine shall be conducted using one of the following methods:
- 6.12.1.1 NIOSH Method 9106, Methamphetamine and Illicit Drugs, Precursors and Adulterants on Wipes by Liquid-Liquid Extraction (Issue 1, October 17, 2011).
- 6.12.1.2 NIOSH Method 9109, Methamphetamine and Illicit Drugs, Precursors and Adulterants on Wipes by Solid Phase Extraction (Issue 1, October 17, 2011).
- 6.12.1.3 NIOSH Method 9111, Methamphetamine on Wipes by Liquid Chromatography/Mass Spectrometry (Issue 1, October 17, 2011).
- 6.12.1.4 Method 8270D in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods," EPA Publication SW-846.

- 1699 6.12.2 Analysis of wipe samples and vacuum samples for iodine shall be conducted  
 1700 using Method 9021 or Method 6020 in "Test Methods for the Evaluation of Solid  
 1701 Waste, Physical/Chemical Methods," EPA Publication SW-846.
- 1702 6.12.3 Analysis of wipe samples for lead shall be conducted using NIOSH Method 9100.
- 1703 6.12.4 Analysis of vapor samples for mercury shall be conducted using NIOSH Method  
 1704 6009.
- 1705 6.12.5 The following analytical methods shall be used to characterize liquid wastes,  
 1706 contaminated soils, and soil samples collected during screening level  
 1707 assessments, preliminary assessments, or clearance sampling:
- 1708 6.12.5.1 Samples shall be analyzed for VOCs by using Method 8260B in "Test  
 1709 Methods for the Evaluation of Solid Waste, Physical/Chemical  
 1710 Methods," EPA Publication SW-846.
- 1712 6.12.5.2 Samples shall be analyzed for ignitability/flash point by a Pensky-  
 1713 Martens Closed Cup Tester, using the test method specified in ASTM  
 1714 Standard D-93-79 or D-93-80 (or Method 1010A in EPA SW-846), or  
 1715 Setaflash Closed Cup Tester, using the test method specified in ASTM  
 1716 standard D-3278-78 (or Method 1020B in EPA SW-846).
- 1717 6.12.5.3 Samples shall be analyzed for corrosivity as determined by the pH  
 1718 electrometric measurement Method 9040C in EPA Publication SW-  
 1719 846, or by corrosivity toward steel using Method 1110A in EPA  
 1720 Publication SW-846.
- 1721 6.12.5.4 Samples shall be analyzed for reactivity using Method 9014 and 9034  
 1722 in EPA Publication SW-846.
- 1723 6.12.6 The following methods shall be used to determine if an OWTS has been  
 1724 impacted by methamphetamine lab wastes, and if the septic tank contains a  
 1725 characteristic hazardous waste:
- 1726 6.12.6.1 VOCs using Method 8260B in "Test Methods for the Evaluation of  
 1727 Solid Waste, Physical/Chemical Methods," EPA Publication SW-846.
- 1728 6.12.6.2 Ignitability/flash point by a Pensky-Martens Closed Cup Tester, using  
 1729 the test method specified in ASTM Standard D-93-79 or D-93-80 (or  
 1730 Method 1010A in EPA SW-846), or Setaflash Closed Cup Tester,  
 1731 using the test method specified in ASTM standard D-3278-78 (or  
 1732 Method 1020B in EPA SW-846).
- 1733 6.12.6.3 Corrosivity as determined by Method 9040C or Method 1110A in EPA  
 1734 Publication SW-846.
- 1735 6.12.6.4 Reactivity using Method 9014/9034 in EPA Publication SW-846.
- 1737 6.12.7 Methamphetamine lab wastes and precursor chemicals discovered on the  
 1738 property shall be characterized using the analytical methods in Section 6.12.6 to  
 1739 determine if they are characteristic hazardous wastes. Alternatively, an onsite  
 1740 Hazard Categorization (HAZCAT) shall be conducted by a trained HAZCAT  
 1741 technician.  
 1742  
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- 1745 6.12.8 Data review and validation shall be conducted in accordance with USEPA  
 1746 Contract Laboratory Program National Functional Guidelines for Superfund  
 1747 Organic Methods Data Review or USEPA Contract Laboratory Program National  
 1748 Functional Guidelines for Inorganic Superfund Data Review.
- 1749 **7.0 Cleanup standards.** The following cleanup standards shall be used to determine if a property  
 1750 has been adequately decontaminated. They may also be used during the screening level  
 1751 assessment or preliminary assessment to demonstrate that a property, or portion of a property, is  
 1752 not contaminated. All properties must meet the cleanup standard for methamphetamine.
- 1753 7.1 The total of any discrete or the average of any composite surface wipe sample or vacuum  
 1754 sample for methamphetamine shall not exceed a concentration of 0.5 µg /100 cm<sup>2</sup>,  
 1755 except as provided in Sections 7.1.2 and 7.1.3 below.
- 1756 7.1.2 The total of any discrete or the average of any composite surface wipe sample  
 1757 from limited exposure areas shall not exceed a concentration of 4 µg /100 cm<sup>2</sup>.
- 1758 7.1.3 The total of any discrete or the average of any composite surface wipe sample  
 1759 from painted-over surfaces shall not exceed a concentration of 1.5 µg /100 cm<sup>2</sup>  
 1760 beneath the paint.
- 1761 7.1.3.1 After all painted-over surfaces (as defined in Section 2 of this Part 1)  
 1762 have been decontaminated in accordance with Section 5 above, and the  
 1763 area meets the cleanup standard specified in this Section 7, the painted-  
 1764 over surfaces shall be encapsulated in accordance with Section 5.5.1.  
 1765 Nothing in this Section 7.1.3 shall be construed to allow painting or  
 1766 encapsulation of surfaces that do not meet the cleanup standards in  
 1767 Section 7.1 at the time of discovery of a methamphetamine-affected  
 1768 property.
- 1769 7.2 If there is evidence of iodine contamination on materials or surfaces that will not be  
 1770 removed, surface wipe samples for iodine shall not exceed a concentration of 22 µg/100  
 1771 cm<sup>2</sup>.
- 1772 7.3 If the preliminary assessment indicates the phenyl-2-propanone (P2P) method of  
 1773 methamphetamine manufacturing was used, surface wipe samples for lead shall not  
 1774 exceed a concentration of 40 µg /ft<sup>2</sup>, and vapor samples for mercury shall not exceed a  
 1775 concentration of 1.0 µg /m<sup>3</sup>.
- 1776 **8.0 Post-Decontamination Reporting.** The Consultant shall prepare a final report, in conjunction  
 1777 with the Contractor, to document the decontamination process and demonstrate that the entire  
 1778 property has been decontaminated to the cleanup standards listed in Section 7.0 of this Part 1.  
 1779 The final report shall include, but not be limited to, the following, to the extent available and  
 1780 applicable:
- 1781 8.1 A copy of the Preliminary Assessment Report or a summary of the information and  
 1782 findings presented therein.
- 1783 8.2 Photographic documentation of post-decontamination property conditions, including  
 1784 previously identified cooking areas, chemical storage areas, waste disposal areas, areas  
 1785 of obvious contamination and sample locations.
- 1786 8.3 A description of the sampling procedures used, including sample collection, handling, and  
 1787 QA/QC.

- 1788 8.4 Documentation of the analytical methods used and laboratory QA/QC documentation,  
1789 including the laboratory analytical report and chain-of-custody documentation.
- 1790 8.5 Results of post-decontamination clearance sampling, including a description of sample  
1791 locations and a computer generated figure with sample locations and identification, and a  
1792 copy of each laboratory report of post-decontamination sample results. Sample results  
1793 shall be presented as reported by the analytical laboratory, and shall not be adjusted,  
1794 changed or manipulated in any way. Spiked samples submitted for analysis shall not be  
1795 used for purposes of compliance with the regulation.
- 1796 8.6 The Contractor shall provide a Decontamination Summary Report, containing the  
1797 following information, to the Department within 30 days of completion and to the  
1798 Consultant for inclusion in the Post-Decontamination Report:
- 1799 8.6.1 A description of the decontamination procedures used and a description of each  
1800 area that was decontaminated.
- 1801 8.6.2 A description of the removal procedures used and a description of areas where  
1802 removal was conducted, and the materials removed.
- 1803 8.6.3 A description of the encapsulation procedures used and documentation of the  
1804 areas and/or materials where encapsulation was performed.
- 1805 8.6.4 A description of the waste management procedures used, including handling and  
1806 final disposition of wastes. Copies of the waste manifests or bills of lading shall  
1807 be included in the final report.
- 1808 8.6.5 Evidence of Contractor certifications in accordance with Part 2 of these  
1809 regulations.
- 1810 8.6.6 Documentation of variations from standard practices.
- 1811 8.6.7 A certification statement, signed by the Decontamination Supervisor who  
1812 oversaw the work, in the following form, if decontamination was performed:
- 1813 I hereby certify that the property has been decontaminated in accordance with  
1814 the procedures set forth in 6 CCR 1014-3, § 5."
- 1815 8.6.8 The Contractor shall retain a copy of the decontamination report for a period of  
1816 seven (7) years.
- 1817 8.7 A certification statement, signed by the Consultant, in the following form:
- 1818 "I do hereby certify that I conducted clearance sampling in accordance with 6 CCR 1014-  
1819 3, § 6. I further certify that the cleanup standards established by 6 CCR 1014-3, § 7 have  
1820 been met as evidenced by testing I conducted."
- 1821 8.8 The Consultant shall provide a copy of the report to the property owner, the Contractor,  
1822 and the Department within 30 days of completing the report. The property owner,  
1823 Contractor and Consultant shall each retain a copy of the report for a period of seven (7)  
1824 years.
- 1825 8.9 To obtain the immunity provided in § 25-18.5-103(2), C.R.S., the owner must provide a  
1826 copy of the report to the governing body as defined in Section 25-18.5-101(7), C.R.S.

1827  
1828**9.0**

**Referenced Materials.** These regulations incorporate by reference (as identified within) materials originally published elsewhere. These regulations do not include later amendments to or editions of the incorporated materials. The Department of Public Health and Environment maintains copies of the complete text of the incorporated materials for public inspection during regular business hours, and shall provide certified copies of any non-copyrighted material to the public at cost upon request.

1834 Information regarding how the incorporated materials may be obtained or examined is available  
1835 from:

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Division Director  
Hazardous Materials Waste Management Division HMWMD-B2  
Colorado Department of Public Health and Environment  
4300 Cherry Creek Drive South  
Denver, CO 80246

1843 Copies of the incorporated materials have been provided to the State Publications Depository and  
1844 Distribution Center, and are available for interlibrary loan. The incorporated materials may be  
1845 examined at any state publications depository library.

1846

**List of Part 1 Materials Incorporated by Reference**1847  
1848

ASTM Method D-3278-78, Standard Test Methods for Flash Point of Liquids by Setaflash Closed Tester.

1849  
1850  
1851

ASTM Method D5756-02 (November 2002), Standard Test Method for Microvacuum Sampling and Indirect Analysis of Dust by Transmission Electron Microscopy for Asbestos Mass Concentration.

1852  
1853

ASTM Method D-93-79 or D-93-80, Standard Test Methods for Flash Point by Pensky-Martens Closed Tester.

1854  
1855

Field Manual for Grid Sampling of PCB Spill Sites to Verify Cleanup, EPA-560/5-86-017 (May 1986).

1856  
1857  
1858  
1859

National Institute for Occupational Safety and Health (NIOSH), U.S. Department of Health and Human Services (DHHS), NIOSH Manual of Analytical Methods (NMAM), 4th. Ed., DHHS (NIOSH) Publication No. 94-113 (August, 1994), 1<sup>st</sup> supplemental publication 96-135 (1996), 2<sup>nd</sup> supplement publication 98-119 (1998):

1860

Method 6009, Mercury (Issue 2, August 1994).

1861

Method 9100, Lead in Surface Wipe Samples (Issue 2, May 1996).

1862  
1863

Method 9106, Methamphetamine and Illicit Drugs, Precursors and Adulterants on Wipes by Liquid-Liquid Extraction (Issue 1, October 17, 2011).

1864  
1865

Method 9109, Methamphetamine and Illicit Drugs, Precursors and Adulterants on Wipes by Solid Phase Extraction (Issue 1, October 17, 2011).

1866  
1867

Method 9111, Methamphetamine on Wipes by Liquid Chromatography/Mass Spectrometry (Issue 1, October 17, 2011).

1868  
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1870  
1871

Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, EPA Publication SW-846 [Third Edition (November 1986), as amended by Updates I (dated July 1992), II (dated September 1994), IIA (dated August 1993), IIB (dated January 1995), III (dated December 1996) and IIIA (dated April 1998)]:

1872  
1873

Method 1010A, Pensky-Martens Closed-Cup Method for Determining Ignitability (Revision O, September 1986).

1874  
1875

Method 1020B, Setaflash Close-Cup Method for Determining Ignitability (Revision 1, July 1992).

1876

Method 1110A, Corrosivity Toward Steel (Revision O, September 1986).

1877  
1878

Method 6020, Inductively Coupled Plasma – Mass Spectrometry (Revision O, September 1994).

1879	Method 8260B, Volatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS) (Revision 2, December 1996).
1880	
1881	Method 8270D, Semivolatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS) (Revision 4, February 2007).
1882	
1883	Method 9014, Titrimetric and Manual Spectrophotometric Determinative Methods for Cyanide (Revision O, December 1996).
1884	
1885	Method 9021, Purgeable Organic Halides (POX) (Revision O, December 1996).
1886	Method 9034, Titrimetric Procedure for Acid-Soluble and Acid Insoluble Sulfides (Revision O, December 1996).
1887	
1888	Method 9040C, pH Electrometric Measurement (Revision 3, November 2004).
1889	USEPA Contract Laboratory Program National Functional Guidelines for Superfund Organic Methods Data Review, Office of Superfund Remediation and Technology Innovation, United States Environmental Protection Agency, OSWER 9240.1-48, USEPA-540R-08-01 (June 2008).
1890	
1891	
1892	USEPA Contract Laboratory Program National Functional Guidelines for Inorganic Superfund Data Review, Office of Superfund Remediation and Technology Innovation, United States Environmental Protection Agency, OSWER 9240.1-51, USEPA-540R-10-011 (January 2010).
1893	
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## PART 2: TRAINING AND CERTIFICATION REQUIREMENTS

1898

1899**1.0**     **Applicability** - The requirements of this Part apply to:

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1.1     Consultants conducting assessment, sampling and clearance activities subject to the provisions of Part 1 of these regulations.

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1.2     Contractors conducting decontamination of methamphetamine-affected properties under the provisions of Part 1 of these regulations.

1905

1.3     Training Providers and instructors offering training under this Part 2.

1906**2.0**

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**Definitions** - The definitions set forth in Part 1 of these regulations are incorporated into this Part by reference. The following definitions shall also apply to this Part:

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“Qualified Instructor” means a person who meets the instructor qualification requirements for the course being taught, as set forth in Section 10.0 of this Part 2.

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“Training Provider” or “Approved Training Provider” means a person who has received Department approval to provide training for one or more specific courses pursuant to this Part.

1913**3.0**

### Interim Authorization

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3.1     Persons who, as of the effective date of this Part 2 of these regulations, are performing assessment or decontamination activities subject to these regulations may continue to perform such activities, as long as they comply with the requirements of this section.

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3.2     Any person who wishes to continue to perform assessment or decontamination activities subject to these regulations must submit an application for interim authorization to the Department within 30 days after the effective date of this Part 2 of these regulations.

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3.2.1     An application for interim authorization for a consultant consists of the application fee specified in Section 17.0; documentation of compliance with the industrial hygienist qualifications set forth in § 24-30-1402, C.R.S.; and documentation of experience in methamphetamine lab assessment in Colorado, including at least one employment reference with contact information.

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3.2.2     An application for interim authorization for a Decontamination Supervisor consists of the application fee specified in Section 17.0; documentation of the successful completion of HAZWOPER training, including the initial 40-hour HAZWOPER training and a current 8-hour HAZWOPER refresher training, compliant with 29 CFR 1910.120; and documentation of experience in methamphetamine lab decontamination in Colorado, including at least one employment reference with contact information.

1932	3.2.3	An application for interim authorization for a Decontamination Worker or
1933		Ventilation Contractor consists of the application fee specified in Section 17.0
1934		and documentation of current compliance with U.S. Occupational Safety and
1935		Health Administration hazardous waste operations and emergency response
1936		(HAZWOPER) training requirements specified in 29 CFR 1910.120 Occupational
1937		Safety and Health Standards, Hazardous Waste Operations and Emergency
1938		Response.
1939	3.2.4	An application for interim authorization for a consultant firm consists of the fee
1940		specified in Section 17.0 and a letter signed by an authorized official attesting
1941		that:
1942	3.2.4.1	the firm has been doing methamphetamine assessment work in Colorado
1943		(and providing at least one employment reference with contact
1944		information);
1945	3.2.4.2	the firm will only utilize individuals who are compliant with the
1946		HAZWOPER training requirements described in 3.2.3 to conduct
1947		assessment and sampling of methamphetamine-affected properties; and
1948	3.2.4.3	the firm and its employees will follow the assessment and sampling
1949		requirements specified in Part 1 of these regulations.
1950	3.2.5	An application for interim authorization for a Contractor firm consists of the fee
1951		specified in Section 17.0 and a letter signed by an authorized official attesting
1952		that:
1953	3.2.5.1	the firm has been doing methamphetamine decontamination work in
1954		Colorado (and providing at least one employment reference with contact
1955		information);;
1956	3.2.5.2	the firm will only utilize individuals who are compliant with the
1957		HAZWOPER training requirements described in 3.2.3 to conduct
1958		decontamination of methamphetamine-affected properties; and
1959	3.2.5.3	the firm and its employees will follow the decontamination requirements
1960		specified in Part 1 of these regulations.
1961	3.2.6	An application for interim authorization for a Ventilation Contractor firm consists
1962		of the fee specified in Section 17.0 and a letter signed by an authorized official
1963		attesting that:
1964	3.2.6.1	the firm has been doing methamphetamine decontamination work in
1965		Colorado (and providing at least one employment reference with contact
1966		information);;

1967		3.2.6.2	the firm will only utilize individuals who are compliant with the
1968			HAZWOPER training requirements described in 3.2.3 to conduct
1969			decontamination of methamphetamine-affected properties; and
1970		3.2.6.3	the firm and its employees will follow the decontamination requirements
1971			specified in Part 1 of these regulations.
1972	3.3		The Department shall review all applications for interim authorization, determine whether
1973			each one is complete, and shall promptly notify each applicant of its determination within
1974			15 days of receipt of the application.
1975	3.3.1		A determination by the Department that an application for interim authorization is
1976			complete does not constitute a determination of compliance with the
1977			requirements for certification or authorization under this Part 2.
1978	3.3.2		Notwithstanding Section 3.3.1, in reviewing the application for interim
1979			authorization, the Department may choose to determine whether the applicant
1980			meets the requirements for certification or authorization under this Part 2. If the
1981			Department determines that the applicant does not meet the requirements for
1982			certification or authorization, it shall so notify the person. This determination need
1983			not be made within the 15-day period provided in this section.
1984	3.4		Commencing 46 days after the effective date of this Part 2, only those persons who have
1985			received notice from the Department that their application for interim authorization is
1986			complete may conduct assessment or decontamination activities subject to these
1987			regulations.
1988	3.5		Interim authorization under this Section 3 shall terminate 180 days after the effective date
1989			of this Part 2. After that date, only those persons who have obtained the appropriate
1990			certification or authorization under this Part 2 may continue to conduct activities subject
1991			to these regulations.
1992	<b>4.0</b>		<b>General Requirements</b>
1993			
1994	4.1		Individuals involved in the assessment, sampling or decontamination of
1995			methamphetamine-affected properties shall obtain certification as a Consultant,
1996			Decontamination Worker, Decontamination Supervisor, or Ventilation Contractor as
1997			appropriate for the work they perform, in accordance with this Part 2.
1998			
1999	4.2		Firms involved in the decontamination of methamphetamine-affected properties shall
2000			obtain approval as a Contractor firm, Ventilation Contractor firm, or Consultant firm as
2001			appropriate for the work they perform, in accordance with this Part 2.
2002			
2003	4.3		The Department will issue a state certification photo identification card and certificate to
2004			each individual who meets the requirements for certification as a Consultant,
2005			Decontamination Worker, Decontamination Supervisor, or Ventilation Contractor. Each
2006			individual certified under these regulations must have their state certification photo
2007			identification (ID) card or evidence of state certification available at each work site to
2008			demonstrate compliance with certification requirements.

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- 4.4 Course completion certificates are the property of the trained individual. Training providers must provide duplicate original course completion certificates to the trained individual upon request. The training provider may charge a reasonable fee for replacement of course completion certificates.
- 4.5 Falsification of course completion certificates or documents used to obtain state certification is a violation of these regulations and shall be sufficient reason for the denial and/or revocation of certification.
- 4.6 A person may hold more than one certification; however, a person may not act in the capacity of a Consultant and either a Contractor or a Ventilation Contractor on the same project.
- 4.7 All forms required under this part are available from the Department.
- 5.0 Consultant Individual Certification Requirements**
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- 5.1 Each individual applying for a Consultant certificate shall:
- 5.1.1 submit an application on a form specified by the Department and pay the application fee specified in Section 17.0;
- 5.1.2 demonstrate compliance with the industrial hygienist qualifications set forth in Section 24-30-1402, C.R.S. The applicant must provide documentation of experience claimed or instruction received, including submission of employment references and contact information;
- 5.1.3 provide documentation of current compliance with HAZWOPER training requirements specified in 29 CFR 1910.120; and
- 5.1.4 complete, and provide documentation of the successful completion of, a Department-approved training covering methamphetamine-affected properties within the 60-day period prior to submitting an application.
- 5.2 Each individual applying for a Consultant certificate or renewal of a Consultant certificate shall pass, on a biennial basis, a Department-administered closed-book examination on the assessment, sampling and decontamination of methamphetamine-affected properties. A passing score shall be 70% or higher. The test content, testing schedule and testing procedures shall be determined by the Department. An applicant who fails to achieve a passing score on a certification exam may retake the exam after submitting a new application, including a retesting fee. An applicant who fails to achieve a passing score on the subsequent certification exam must complete a refresher training course prior to attempting to pass the test a third time. The applicant may re-take the exam a third time after submittal of a new application and retesting fee and documentation of attendance at the refresher training course. An applicant who fails to achieve a passing score on a third consecutive test must re-take the basic training course and must comply with the application and fee requirements of Section 5.1.1.
- 5.3 Consultant certificates are valid for two (2) years from the date of issuance, provided the individual maintains compliance with HAZWOPER training requirements specified in 29 CFR 1910.120.

2061  
2062 5.4 Each individual applying for renewal of an existing certification or reinstatement of an  
2063 expired certificate shall submit an application on a form specified by the Department,  
2064 complete a refresher training course from a Department-approved training provider, and  
2065 comply with the testing requirements of Section 5.2. If the 5.1.4 training certificate has  
2066 been expired for more than 12 months, the individual must re-take the basic training  
2067 course.

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2069 5.5 The requirements of Section 5.1.4 do not apply to Qualified Instructors applying for  
2070 certification as a consultant.

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2072 **6.0 Consultant Firm Certification Requirements**

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2074 6.1 All firms that perform or offer to perform assessment or sampling of methamphetamine-  
2075 affected properties shall be certified by the Department.

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2077 6.2 A firm seeking certification as a Consultant firm shall submit an application on a form  
2078 specified by the Department and pay the application fee specified in Section 17.0.

2079  
2080 6.3 A firm seeking certification shall submit to the Department a letter signed by an  
2081 authorized official attesting that the firm will only utilize appropriately-certified individuals  
2082 to conduct assessment and sampling of methamphetamine-affected properties, and that  
2083 the firm and its employees will follow the assessment and sampling requirements  
2084 specified in Part 1 of these regulations.

2085  
2086 6.4 The Department shall review the application, and shall, within sixty (60) calendar days of  
2087 receipt, either issue a certificate of approval or shall issue a letter describing the reasons  
2088 for disapproval.

2089  
2090 6.5 Consultant firm certifications are valid for two (2) years from the date of issuance.

2091  
2092 6.6 Each firm applying for renewal of an existing certification or reinstatement of an expired  
2093 certification shall submit an application on a form specified by the Department and pay  
2094 the application fee specified in Section 17.0.

2095  
2096 6.7 To maintain their certification, Consultant firms shall:

2097  
2098 6.7.1 maintain all records pursuant to the requirements of Part 1, Section 8.0 of these  
2099 regulations;

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2101 6.7.2 ensure that all individuals performing methamphetamine-affected property  
2102 assessment and sampling for their firm have been properly trained and certified  
2103 by the Department pursuant to the requirements of these regulations;

2104  
2105 6.7.3 ensure that all individuals performing methamphetamine-affected property  
2106 assessment and sampling for their firm maintain compliance with HAZWOPER  
2107 training requirements specified in 29 CFR 1910.120; and

2108  
2109 6.7.4 ensure that anyone performing methamphetamine-affected property assessment  
2110 or sampling for their firm has a valid Colorado certification photo identification  
2111 card on the worksite at all times.

21137.0

## **Decontamination Supervisor, Decontamination Worker and Ventilation Contractor Certification Requirements**

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- 7.1 Each individual applying for a Decontamination Worker certificate, Decontamination Supervisor certificate, or Ventilation Contractor certificate shall:

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- 7.1.1 submit an application on a form specified by the Department and pay the application fee specified in Section 17.0;

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- 7.1.2 provide documentation of current compliance with HAZWOPER training requirements specified in 29 CFR 1910.120; and

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- 7.1.3 complete, and provide documentation of the completion of, a Department-approved training appropriate for the certification they are seeking within the 60-day period prior to submitting the application.

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- 7.2 Each individual applying for a Decontamination Worker certificate or Decontamination Supervisor certificate must pass a Department-administered closed book examination. A passing score shall be 70% or higher. The test content, testing schedule and testing procedures shall be determined by the Department. An applicant who fails to achieve a passing score on a certification exam may re-take the exam after submitting a new application, including a retesting fee. If an applicant fails to achieve a passing score on the subsequent certification exam, the applicant must complete a refresher training course prior to attempting to pass the test a third time. The applicant may re-take the exam a third time after submittal of a new application and retesting fee and documentation of attendance at the refresher training course. If the applicant fails to achieve a passing score on a third consecutive test, the applicant must re-take the basic training course, and must comply with the application and fee requirements of Section 7.1.1.

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- 7.3 Decontamination Worker and Decontamination Supervisor certificates are valid for two (2) years from the date of issuance, provided the individual maintains compliance with HAZWOPER training requirements specified in 29 CFR 1910.120.

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- 7.4 Ventilation Contractor certificates are valid indefinitely, provided the individual maintains compliance with HAZWOPER training requirements specified in 29 CFR 1910.120. Ventilation Contractors are authorized to decontaminate ventilation systems, but may not perform any other decontamination work subject to these regulations, unless they are also certified as a Decontamination Worker or Decontamination Supervisor.

2152

2153

2154

- 7.5 Each individual applying for renewal of an existing Decontamination Worker or Decontamination Supervisor certificate or reinstatement of an expired certificate shall:

2155

2156

2157

- 7.5.1 submit an application on a form specified by the Department and pay the application fee specified in Section 17.0;

2158

2159

2160

- 7.5.2 provide documentation of the successful completion of HAZWOPER 8-hour refresher training, as required by 29 CFR 1910.120; and

2161

2162

2163

2164

- 7.5.3 successfully complete, and provide documentation of the successful completion of, a Department-approved refresher training appropriate for the certification they are seeking within the 60-day period prior to submitting the application; however,

78

2165 if the certification has been expired for more than 12 months, the individual must  
 2166 successfully complete the basic training appropriate for their certification; and

2167  
 2168 7.5.4. comply with the testing requirements of Section 7.2.

2169  
 2170 7.6 The requirements of Section 7.1.3 do not apply to Qualified Instructors applying for  
 2171 certification as Decontamination Workers, Decontamination Supervisors, or Ventilation  
 2172 Contractors.

2173  
 2174 **8.0**

#### **Contractor Firm Approval Requirements**

2175  
 2176 8.1 All firms that perform or offer to perform decontamination of methamphetamine-affected  
 2177 properties shall be approved by the Department.

2178  
 2179 8.2 A firm seeking approval as a Contractor firm shall submit an application on a form  
 2180 specified by the Department and pay the application fee specified in Section 17.0.

2181  
 2182 8.3 A firm seeking approval shall submit to the Department a letter signed by an authorized  
 2183 official attesting that the firm will only utilize appropriately-certified individuals to conduct  
 2184 decontamination of methamphetamine-affected properties, and that the firm and its  
 2185 employees will follow the decontamination requirements specified in Part 1 of these  
 2186 regulations.

2187  
 2188 8.4 The Department shall review the application and, within sixty (60) calendar days of  
 2189 receipt, shall either issue a certificate of approval or shall issue a letter describing the  
 2190 reasons for disapproval.

2191  
 2192 8.5 Contractor firm approvals are valid for two (2) years from the date of issuance.

2193  
 2194 8.6 Firms applying for renewal of approval or reinstatement of an expired approval shall  
 2195 submit an application on a form specified by the Department and pay the application fee  
 2196 specified in Section 17.0.

2197  
 2198 8.7 To maintain its approval, a Contractor firm shall:

2199  
 2200 8.7.1 maintain all records pursuant to the requirements of Part 1, Section 8.0 of these  
 2201 regulations;

2202  
 2203 8.7.2 ensure that all individuals performing methamphetamine-affected property  
 2204 decontamination for the firm have been properly trained and certified by the  
 2205 Department pursuant to the requirements of these regulations;

2206  
 2207 8.7.3 ensure that all individuals performing methamphetamine-affected property  
 2208 decontamination for the firm maintain compliance with HAZWOPER training  
 2209 requirements specified in 29 CFR 1910.120; and

2210  
 2211 8.7.4 ensure that anyone performing methamphetamine-affected property  
 2212 decontamination for the firm has a valid Colorado certification photo identification  
 2213 card on the worksite at all times.

2214  
 2215 **9.0**

#### **Ventilation Contractor Firm Approval Requirements**

2216  
 80

- 2217 9.1 All firms that perform or offer to perform decontamination of ventilation systems at  
2218 methamphetamine-affected properties shall be approved by the Department.
- 2219 9.2 A firm seeking approval as a Ventilation Contractor shall submit an application on a  
2220 specified by the Department and pay the application fee specified in Section 17.0.  
2221
- 2222 9.3 A firm seeking approval as a Ventilation Contractor firm shall submit to the Department a  
2223 letter signed by an authorized official attesting that the firm will only utilize appropriately-  
2224 certified individuals to conduct decontamination of ventilation systems at  
2225 methamphetamine-affected properties, and that the firm and its employees will follow the  
2226 decontamination requirements specified in Part 1 of these regulations.  
2227
- 2228 9.4 The Department shall review the application and, within sixty (60) calendar days of  
2229 receipt, shall either issue a certificate of approval or shall issue a letter describing the  
2230 reasons for disapproval.  
2231
- 2232 9.5 Ventilation Contractor firm approvals are valid for two (2) years from the date of issuance.  
2233
- 2234 9.6 Firms applying for renewal of Ventilation Contractor firm approval or reinstatement of an  
2235 expired approval shall submit an application on a form specified by the Department and  
2236 pay the application fee specified in Section 17.0.  
2237
- 2238 9.7 To maintain its approval, a Ventilation Contractor firm shall:  
2239
- 2240 9.7.1 maintain all records pursuant to the requirements of Part 1, Section 8.0 of these  
2241 regulations;  
2242
- 2243 9.7.2 ensure that all individuals performing decontamination of ventilation systems at  
2244 methamphetamine-affected properties for the firm have been properly trained  
2245 and certified by the Department pursuant to the requirements of these  
2246 regulations;  
2247
- 2248 9.7.3 ensure that all individuals performing decontamination of ventilation systems at  
2249 methamphetamine-affected properties for the firm maintain compliance with  
2250 HAZWOPER training requirements specified in 29 CFR 1910.120; and  
2251
- 2252 9.7.4 ensure that anyone performing decontamination of ventilation systems at  
2253 methamphetamine-affected properties for the firm has a valid Colorado  
2254 certification photo identification card on the worksite at all times.  
2255

2256  
2257 **10.0 Training Provider Approval Application and Renewal Procedures**

- 2258 10.1 Any firm wishing to receive approval as a Training Provider shall submit the information  
2259 specified in Section 10.2 and the fee specified in Section 17.0. Training Provider  
2260 approval is granted on a course-by-course basis for the following courses:  
2261
- 2262 10.1.1 Consultant course (includes basic and refresher);  
2263
- 2264 10.1.2 Decontamination Worker course (includes basic and refresher);  
2265
- 2266 10.1.3 Decontamination Supervisor course (includes basic and refresher);  
2267



- 2269 10.1.4 Ventilation Contractor course.  
2270
- 2271 10.2 Firms seeking approval as Training Providers must submit the following information, as  
2272 specified on an application form available from the Department, for each course that they  
2273 wish to offer:
- 2274 10.2.1 a course syllabus addressing the curricula for the course as set forth in Appendix  
2275 A or B;  
2276
- 2277 10.2.2 course materials appropriate to the syllabus;  
2278
- 2279 10.2.3 the name, contact information (physical address, email address, telephone and  
2280 fax numbers) and documentation of the qualifications of each Qualified Instructor  
2281 who will teach each course; and  
2282
- 2283 10.2.4 the applicant's name and business contact information (physical address, email  
2284 address, telephone and fax numbers)  
2285
- 2286 10.3 A training provider may apply for approval to offer additional courses at any time.  
2287
- 2288 10.4 The Department shall review the application and, within ninety (90) calendar days of  
2289 receipt, shall inform the applicant in writing which courses, if any, they have been  
2290 approved to offer as Training Providers in Colorado. If the Department disapproves any  
2291 application, it shall specify the changes that must be made before approval may be  
2292 granted.  
2293
- 2294 10.5 Training provider approval is valid for three (3) years from the date of issuance.  
2295
- 2296 10.6 Firms desiring to renew their approval as Training Providers for a given course or  
2297 courses shall submit the following materials no later than 60 days before the expiration  
2298 date of their authorization:  
2299
- 2300 10.6.1 A description of any changes to the course content or course materials since the  
2301 last application was approved.  
2302
- 2303 10.6.2 the name, contact information (physical address, email address, telephone and  
2304 fax numbers) and documentation of the qualifications of any new instructors not  
2305 included in previous applications.  
2306
- 2307 10.6.3 The application renewal fee for each course as specified in Section 17.  
2308
- 2309 **11.0 Qualified Instructor approval application and renewal procedures**  
2310
- 2311 11.1 A person seeking approval as a Qualified Instructor for Consultant training,  
2312 Decontamination Worker training, Decontamination Supervisor training, or Ventilation  
2313 Contractor training under this part shall submit an application on a form specified by the  
2314 Department, pay the fee specified in Section 17, and meet the requirements of Section  
2315 11.4. A person seeking approval as a Qualified Instructor for Consultant training under  
2316 this part must also meet the requirements of Section 11.2. A person seeking approval as  
2317 a Qualified Instructor for Contractor training under this part must also meet the  
2318 requirements of Section 11.3.  
2319
- 2320

- 2321 11.2 A person seeking approval as a Qualified Instructor for Consultant training must:
- 2322
- 2323 11.2.1 be a high school graduate or have earned a GED;
- 2324
- 2325 11.2.2 be a certified industrial hygienist or an industrial hygienist, as those terms are
- 2326 defined in Section 24-30-1402, C.R.S.; and
- 2327
- 2328 11.2.3 have at least five (5) years of field experience conducting methamphetamine-
- 2329 affected property assessment and sampling activities. Documentation of
- 2330 experience claimed or instruction received must be provided by the applicant.
- 2331 This shall include submission of employment references, including telephone
- 2332 numbers, to allow for Department verification.
- 2333
- 2334 11.3 A person seeking approval as a Qualified Instructor for Contractor training must:
- 2335
- 2336 11.3.1 be a high school graduate or have earned a GED;
- 2337
- 2338 11.3.2 have five (5) years of field experience in the subject being taught.
- 2339 Documentation of experience claimed or instruction received must be provided
- 2340 by the applicant. This shall include submission of employment references,
- 2341 including telephone numbers, to allow for Department verification.
- 2342
- 2343 11.4 Persons seeking approval as a Qualified Instructor must pass a test administered by the
- 2344 Department with a score of 90% or higher. Applicants who fail to achieve a passing score
- 2345 must wait 6 months before re-applying.
- 2346
- 2347 11.5 The Department will issue written approvals to persons who meet the requirements of
- 2348 Sections 11.1 through 11.4. Qualified Instructor approvals are valid for two (2) years from
- 2349 the date of issuance.
- 2350
- 2351 11.6 Each individual applying for renewal of an existing approval as a Qualified Instructor or
- 2352 reinstatement of an expired approval shall submit an application on a form specified by
- 2353 the Department and comply with the testing requirements of Section 11.4.
- 2354
- 2355 11.7 The Department will, within 90 days of receipt, review and approve or disapprove all
- 2356 applications for approval as a Qualified Instructor, and for renewal of existing approvals.
- 2357
- 2358 **12.0 Training Provider Requirements**
- 2359
- 2360 12.1 To maintain approval to offer courses, approved training providers must comply with the
- 2361 requirements set forth in this section.
- 2362
- 2363 12.2 Course administration requirements. The training provider shall:
- 2364
- 2365 12.2.1 Require instructors to follow the approved syllabus for each course being taught;
- 2366
- 2367 12.2.2 Provide the Department information on newly hired Qualified Instructors, and
- 2368 notice of termination of Qualified Instructors;
- 2369
- 2370 12.2.3 Provide each student with a copy of the approved course materials;
- 2371

- 2372 12.2.4 Provide adequate facilities for the delivery of the lecture and hands-on training,  
 2373 as applicable; and
- 2374 12.2.5 Ensure that all training courses are taught by a Qualified Instructor.  
 2375
- 2376 12.3 The training provider shall issue a course completion certificate to each student who  
 2377 attends the entire training course. The course completion certificate shall include:  
 2378
- 2379 12.3.1 The name of the student;  
 2380
- 2381 12.3.2 A unique identification number;  
 2382
- 2383 12.3.3 The dates of course completion; and  
 2384
- 2385 12.3.4 The name, address, email address, telephone number, and signature of the  
 2386 training provider.  
 2387
- 2388 12.4 Training providers must maintain the following records for a minimum of three (3) years,  
 2389 and make them available to the Department upon request:  
 2390
- 2391 12.4.1 Instructor qualifications;  
 2392
- 2393 12.4.2 Syllabi and materials for all currently approved courses, and documents  
 2394 reflecting any changes to syllabi or materials for approved courses;  
 2395
- 2396 12.4.3 Documentation of the course completion rate; and  
 2397
- 2398 12.4.4 Each student's course completion certificate.  
 2399  
 2400
- 2401 **13.0 Certification and Approval, Denial, Suspension, Revocation, or Refusal to Renew**
- 2402 13.1 The Department shall review all initial and renewal applications for Consultant and  
 2403 Contractor certification and for Qualified Instructor and Training Provider approval and  
 2404 either grant or deny them.  
 2405
- 2406 13.2 The Department may deny certification to any person who does not meet the minimum  
 2407 qualifications set forth in Section 5.0 or 7.0 of this Part 2, as applicable.  
 2408
- 2409 13.3 The Department may deny approval to any firm that does not meet the requirements set  
 2410 forth in Section 6.0, 8.0, 9.0, or 10.0 of this Part 2, as applicable.  
 2411
- 2412 13.4 the Department may deny approval to any person who does not meet the requirements  
 2413 set forth in Section 11.0 of this Part 2, as applicable.  
 2414
- 2415 13.5 Failure to comply with applicable requirements of these regulations constitutes grounds  
 2416 for denial, suspension, revocation, or refusal to renew certifications and approvals.  
 2417
- 2418 13.6 The Department may deny, suspend, revoke or refuse to renew certifications and  
 2419 approvals in accordance with the provisions of §§ 25-18.5-107 and 24-4-104, C.R.S.  
 2420
- 2421 **14.0 Training Course Notifications**  
 2422
- 2423  
 88

- 2424 14.1 Training course providers must notify the Department via e-mail at of scheduled courses  
 2425 at least two weeks (ten working days) prior to the date of the course.  
 2426  
 2427 14.2 Notifications of course cancellations must be provided to the Department by 5:00 p.m. the  
 2428 day prior to the scheduled day of the course.

2429

#### 2430 **15.0 Training Course Audits**

- 2431  
 2432 15.1 The Department may audit any training course approved under this part.  
 2433  
 2434 15.2 There shall be no registration fee to the Department for auditing a training course.  
 2435  
 2436 15.3 Any significant omissions or deficiencies observed during the audit may result in  
 2437 suspension or revocation of course approval.

2438

#### 2439 **16.0 Reciprocity**

- 2440  
 2441 16.1 The Department may provide reciprocal certification for Decontamination Workers and  
 2442 Decontamination Supervisors certified in another state if it finds that:  
 2443  
 2444 16.1.1 The decontamination standards and training of the other state are substantially  
 2445 similar to those of these regulations; and  
 2446  
 2447 16.1.2 The person seeking reciprocity is currently in good standing in the other state.  
 2448  
 2449 16.2 Each individual applying for reciprocity shall:  
 2450  
 2451 16.2.1 Submit an application on a form specified by the Department and pay the  
 2452 application fee specified in Section 17.0;  
 2453  
 2454 16.2.2 Provide documentation of compliance with HAZWOPER training requirements  
 2455 specified in 29 CFR 1910.120; and  
 2456  
 2457 16.2.3 Pass a Department-administered closed book examination. A passing score  
 2458 shall be 70% or higher. The test content, testing schedule and testing  
 2459 procedures shall be determined by the Department. If the applicant fails to  
 2460 achieve a passing score on the certification exam, the applicant must attend a  
 2461 Department-approved training course, and must comply with the application  
 2462 requirements of 7.0 and fee requirements of 17.0.

2463

#### 2464 **17.0 Fees**

- 2465  
 2466 17.1 Persons seeking initial, renewal, or reinstated certification or approval under this Part 2  
 2467 shall submit application fees to the Department in accordance with the schedule in 17.2.  
 2468  
 2469 17.2 Fee Schedule  
 2470  
 2471 17.2.1 Interim Authorization Fees  
 2472

Interim Authorization	Fee
Consultant	\$150
Decontamination Worker	\$75

Decontamination Supervisor	\$150
Ventilation Contractor	\$50
Contractor firm	\$250
Consultant firm	\$250
Ventilation firm	\$250

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2474  
2475

#### 17.2.2 Certification, Approval and Monitoring Fees

Type of certification or approval	Fee
Consultant	\$600
Decontamination Worker	\$300
Decontamination Supervisor	\$600
Ventilation Contractor	\$200
Contractor firm	\$1,000
Consultant firm	\$1,000
Ventilation firm	\$1,000
Training provider (per class)	\$750
Instructor	\$200
Retesting (all disciplines)	\$100

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2477  
2478  
2479  
2480

17.3 Payment of fees is due concurrently with the application.

17.4 Fees must be paid by check, money order or electronic funds transfer (EFT) to the Treasurer of the State of Colorado.

## APPENDIX A

### METHAMPHETAMINE-AFFECTED PROPERTIES CONSULTANT TRAINING CURRICULA REQUIREMENTS

#### Purpose

The purpose of this appendix is to establish minimum curricula requirements for consultant training courses provided in accordance with these regulations.

#### Course Duration

#### Course Duration

The Basic Consultant Course duration shall be twenty four (24) hours

The Consultant Refresher Course duration shall be eight (8) hours

#### Basic Consultant Course Content

#### Basic Consultant Course Content

The Basic Consultant Course shall cover, at a minimum, the following:

#### 1. Meth Background

##### a. Overview of manufacturing methods

i. precursors

ii. byproducts

iii. signs of contamination

iv. contaminant migration and deposition

##### b. Overview of chemical and physical hazards

i. chemical properties and routes of exposure

ii. flammable, combustible, corrosive and reactive materials

iii. booby traps

iv. sharps and biohazards

##### c. Health Effects

#### 2. Worker Protection Overview

##### a. Personal protective equipment (PPE)

##### b. Worker decontamination

#### 3. Regulations

a. Detailed review of meth lab cleanup regulation (6 CCR 1014-3, Part 1).

b. Overview of asbestos sampling requirements, in accordance with AQCC Regulation No. 8, (5 CCR 1001-10, Part B), as applicable to meth lab assessment.

c. Overview of lead paint sampling and abatement requirements, in accordance with AQCC Regulation No. 19 (5 CCR 1001-23), as applicable to meth lab assessment

d. Overview of hazardous waste regulations (6 CCR 1007-3) applicable to meth labs

e. Overview of solid waste regulations (6 CCR 1007-2, Part 1) applicable to meth labs

#### 4. Screening level assessments

##### a. Observations of property condition

- 2520 b. Screening level assessment sampling procedures
- 2521 i. wipe sample collection
- 2522 ii. sample handling requirements
- 2523 iii. sample chain-of-custody
- 25245. Preliminary Site Assessments
- 2525 a. Assessment of property condition
- 2526 i. identification of structural features
- 2527 ii. identification of areas known or suspected to have been painted after contamination event
- 2528 iii. identification of indoor and outdoor disposal areas
- 2529 b. Assessment Sampling procedures
- 2530 i. determination of material porosity
- 2531 ii. wipe sample collection
- 2532 iii. sampling to evaluate concentration below paint
- 2533 iv. vacuum sample collection
- 2534 v. bulk sample collection
- 2535 vi. iodine and mercury sampling
- 2536 vii. sampling for other compounds
- 2537 viii. sampling personal property
- 2538 ix. sample handling requirements
- 2539 x. sample chain-of-custody
- 2540 c. Assessment of on-site wastewater treatment systems (OWTSSs)
- 2541 i. screening
- 2542 ii. sample collection
- 2543 iii. sample handling requirements
- 2544 iv. sample chain-of-custody
- 2545 d. Record keeping
- 25466. Overview of decontamination and removal requirements
- 25477. Information needed to determine and develop decontamination scopes of work
- 25488. Communication and coordination with contractors, regulators, home owners, and tenants
- 25499. Clearance sampling (address painted or sealed surfaces)
- 2550 a. determination of material porosity
- 2551 b. wipe sample collection
- 2552 c. vacuum sample collection
- 2553 d. bulk sample collection
- 2554 e. iodine and mercury sampling
- 2555 f. sampling for other compounds
- 2556 g. personal property sampling
- 2557 h. sample handling requirements
- 2558 i. sample chain-of-custody
- 255910. Data QA/QC and interpretation for all types of samples
- 256011. Cleanup standards and clearance criteria

256112. Reporting

2562

2563**Consultant Refresher Course Content**

2564The Consultant Refresher Course shall include, at a minimum:

25651. A thorough review of subjects covered in the Basic Consultant Course

25662. A review of regulatory changes and interpretations

25673. An update of information on industrial hygiene practices and procedures

25684. Other subjects as necessary to update information on new technologies or procedures



## APPENDIX B

### METHAMPHETAMINE-AFFECTED PROPERTIES CONTRACTOR TRAINING CURRICULA REQUIREMENTS

#### 2573**Purpose**

2574The purpose of this appendix is to establish minimum curricula requirements for Decontamination Worker  
2575and Decontamination Supervisor training courses provided in accordance with these regulations.

#### 2576

#### 2577**Course Duration**

2578The Basic Decontamination Worker Course duration shall be minimum sixteen (16) hours.

2579The Basic Decontamination Supervisor Course duration shall be minimum twenty four (24) hours  
2580 (inclusive of basic worker course content).

2581The Decontamination Worker Refresher Course duration shall be minimum eight (8) hours.

2582The Decontamination Supervisor Refresher Course duration shall be minimum eight (8) hours.

2583The Ventilation Contractor Course duration shall be minimum four (4) hours.

#### 2584

#### 2585**Basic Decontamination Worker Course Content**

2586The Basic Decontamination Worker Course shall cover, at a minimum, the following:

#### 25871. Meth Background

#### 2588 a. Overview of manufacturing methods

2589 i. precursors

2590 ii. byproducts

2591 iii. signs of contamination

#### 2592 b. Overview of chemical and physical hazards specific to methamphetamine manufacturing

2593 i. chemical properties and routes of exposure

2594 ii. flammable, combustible, corrosive and reactive materials

2595 iii. booby traps

2596 iv. sharps and biohazards

#### 2597 c. Health Effects

#### 25982. Worker Protection Overview

#### 2599 a. Personal protective equipment (PPE)

#### 2600 b. Worker decontamination

#### 26013. Regulations

#### 2602 a. Detailed review of meth lab cleanup regulation (6 CCR 1014-3, Part 1)

#### 2603 b. Overview of asbestos sampling and abatement requirements, in accordance with AQCC

2604 Regulation No. 8, (5 CCR 1001-10, Part B), as applicable to meth lab decontamination and  
2605 demolition

#### 2606 c. Overview of lead paint sampling and abatement requirements, in accordance with AQCC

2607 Regulation No. 19 (5 CCR 1001-23), as applicable to meth lab decontamination and demolition

- 2608 d. Overview of hazardous waste regulations (6 CCR 1007-3) applicable to waste generated during
- 2609 decontamination.
- 2610 e. Overview of solid waste regulations (6 CCR 1007-2, Part 1) applicable to waste generated during
- 2611 decontamination.
- 26124. Decontamination Work Scope
- 2613 a. Identification of surfaces and items that can be decontaminated
- 2614 b. Identification of surfaces and items that should be removed
- 2615 c. Inventory of equipment and supplies
- 2616 d. Waste handling and disposal requirements
- 26175. Decontamination Procedures
- 2618 a. Sequencing of decontamination and removal
- 2619 b. Engineering and Environmental Controls
- 2620 i. establishing negative pressure containment (lecture and hands-on training)
- 2621 ii. establishing critical barriers
- 2622 iii. control of excess liquids
- 2623 c. Decontamination of surfaces
- 2624 ii. non-porous surfaces
- 2625 iii. porous surfaces
- 2626 d. Removal of contaminated surfaces
- 2627 e. Decontamination of ventilation systems
- 2628 i. sequencing of work
- 2629 ii. component removal
- 2630 iii. component decontamination
- 2631 f. Decontamination of attics
- 2632 i. sequencing of work
- 2633 ii. insulation removal
- 2634 iii. control of excess liquids
- 2635 g. Decontamination of crawl spaces
- 2636 i. sequencing of work
- 2637 ii. insulation removal
- 2638 iii. vapor barrier removal and replacement
- 2639 iv. control of excess liquids
- 2640 h. Decontamination of personal property
- 2641 i. non-porous items
- 2642 ii. porous items
- 2643 iii. items that don't need to be sampled
- 2644 iv. items that need to be sampled
- 2645 i. Securing contaminated areas and/or items
- 2646 j. Discussion of demolition in lieu of decontamination
- 2647 k. Field documentation

2648

2649 **Basic Decontamination Supervisor Course**

2650 The Basic Decontamination Supervisor Course shall cover, at a minimum, the following:

26511. All information provided in the Basic Decontamination Work Course

26522. Regulatory liability

2653 a. Overview of enforcement under the Regulation (6 CCR 1014-3, Part 3)

2654 b. Overview of enforcement of violations of other regulations specified in No. 3 of Basic

2655 Decontamination Worker Course

2656 c. Insurance requirements

26573. Health &amp; Safety Plans

26584. Onsite training and oversight of sub contractors

26595. Pre-decontamination property evaluation

2660 a. Identification of surfaces and items that can be decontaminated

2661 b. Identification of surfaces and items that should be removed

2662 c. Inventory of equipment and supplies

2663 d. Identification of permit requirements for demolition of structures

2664 e. Evaluation of waste handling and disposal requirements

2665 f. Communication and coordination with consultant, regulators, home owners, and tenants

26666. Decontamination Work plan development

26677. Record keeping

26688. Reporting

2669

2670 **Decontamination Worker Refresher Course Content**

2671 The Decontamination Worker Refresher Course shall include, at a minimum:

26721. A thorough review of subjects covered in the Basic Decontamination Worker Course

26732. A review of regulatory changes and interpretations

26743. An update of information on decontamination procedures and equipment

26754. Other subjects as necessary to update information on new technologies or procedures

2676

2677 **Decontamination Supervisor Refresher Course Content**

2678 The Decontamination Supervisor Refresher Course shall include, at a minimum:

26791. A thorough review of subjects covered in the Basic Decontamination Supervisor Course

26802. A review of regulatory changes and interpretations

26813. An update of information on decontamination procedures and equipment

26824. Other subjects as necessary to update information on new technologies or procedures

2683

**2684 Ventilation Contractor Course**

2685 The Ventilation Contractor Course shall cover, at a minimum, the following:

26861. Meth Background

2687 a. Overview of chemical and physical hazards specific to methamphetamine manufacturing

2688 i. chemical properties and routes of exposure

2689 ii. flammable, combustible, corrosive and reactive materials

2690 iii. booby traps

2691 iv. sharps and biohazards

2692 b. Health Effects

26932. Worker Protection Overview

2694 a. Personal protective equipment (PPE)

2695 b. Worker decontamination

26963. Regulations

2697 a. An overview of meth lab cleanup regulation (6 CCR 1014-3, Part 1)

2698 b. A detailed review of Appendix C of the regulation (Ventilation System Decontamination)

26994. Ventilation System Decontamination Procedures

2700 a. sequencing of work

2701 b. component removal

2702 c. component decontamination

**Applicability** - The requirements of this Part apply to:

- Definitions** - The definitions set forth in Parts 1 and 2 of these regulations are incorporated into this Part by reference. The following definition shall also apply to this Part:

“Gross noncompliance” means substantial deviation from the requirements of these regulations. Gross non-compliance includes, but is not limited to:

- ## Notification and Imposition

- 108

- 2737 violation. Such conference shall be held within the thirty (30) days allowed for written  
2738 response.
- 2739 3.5 After consideration of any written response and informal conference, the Department  
2740 shall issue a letter within thirty (30) days after the date of the informal conference or  
2741 written response, whichever is later, affirming or dismissing the violation. If the  
2742 Department affirms the violation, the Department shall issue an administrative order  
2743 within one hundred and eighty (180) days after the time for a written response has  
2744 expired. The administrative order shall include any remaining corrective actions that the  
2745 violator shall take and any administrative penalty that the Department determines is  
2746 appropriate.
- 2747 3.6 The Department shall serve an administrative order on the person subject to the order by  
2748 personal service or by registered mail, return receipt requested, at the person's last  
2749 known address.
- 2750 3.7 An administrative order may be prohibitory or mandatory in effect.
- 2751 3.8 Administrative orders shall be effective immediately upon issuance unless otherwise  
2752 provided in the order.
- 2753 **4.0 Penalties**
- 2754 4.1 Any person who violates any requirement of these regulations shall be subject to an  
2755 administrative penalty not to exceed fifteen thousand dollars per day for each violation.
- 2756 4.2 For any person subject to an administrative penalty as specified in 4.1, the amount of the  
2757 penalty will be determined in accordance with the provisions of Section 25-18.5-107  
2758 C.R.S. The factors contained in Sections 4.2.1 and 4.2.3 will be used to determine the  
2759 severity of the violation and establish the base penalty amount. The factors contained in  
2760 Sections 4.2.2, 4.2.4 and 4.2.5 are aggravating factors and may be applied with other  
2761 factors to increase the penalty amount. The factors contained in Sections 4.2.7 and 4.2.8  
2762 are mitigating factors and may be applied with other factors to reduce the penalty  
2763 amount. The factor contained in Section 4.2.9 may be an aggravating or mitigating factor  
2764 and may be used to increase or decrease the penalty amount as determined by the  
2765 Department. The economic benefit factor in Section 4.2.6 will be added to the adjusted  
2766 penalty to reach the final penalty amount. The existence of multiple violations and the  
2767 duration of the violation(s) will be considered in assessing a final administrative penalty.
- 2768 4.2.1 The seriousness of the violation;
- 2769 4.2.2 Whether the violation was intentional, reckless, or negligent;
- 2770 4.2.3 Any impact on, or threat to, public health or environment as a result of the  
2771 violation;
- 2772 4.2.4 The violator's degree of recalcitrance;
- 2773 4.2.5 Whether the violator has had a prior violation, if so, the nature and severity of the  
2774 prior violation;

- 2775            4.2.6    The economic benefit the violator received as a result of the violation;
- 2776            4.2.7    Whether the violator voluntarily, timely, and completely disclosed the violation  
2777            before the Department discovered it;
- 2778            4.2.8    Whether the violator fully and promptly cooperated with the Department following  
2779            disclosure or discovery of the violation; and
- 2780            4.2.9    Any other relevant aggravating or mitigating circumstances.
- 2781            4.3       The Department may compromise, mitigate, or remit any administrative penalty as  
2782            justified by written documentation. The Department may enter into a settlement  
2783            agreement regarding any administrative penalty or claim. The settlement agreement may  
2784            include payment or contribution of moneys to state or local agencies for other  
2785            environmentally beneficial purposes.
- 2786            4.4       At the request of the Department, the Attorney General may institute a civil action to  
2787            collect any administrative penalty imposed pursuant to these regulations.
- 2788**5.0       Judicial Review**
- 2789            5.1       Final actions of the Department are subject to judicial review in accordance with Section  
2790            24-4-106 C.R.S.

2791 **DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**

2792

2793 **State Board of Health**

2794

2795 **6 CCR 1014-3**

2796

2797 **REGULATIONS PERTAINING TO THE CLEANUP OF**  
2798 **METHAMPHETAMINE LABORATORIES**

2799

2800**1.0** — **Purpose** — Pursuant to section 25-18.5-102, C.R.S., the Board of Health is authorized to establish  
2801 standards for the cleanup of illegal laboratories used to manufacture methamphetamine, which  
2802 property owners are required to meet pursuant to Section 25-18.5-103, C.R.S., except that a  
2803 property owner may elect instead to demolish the contaminated property.

2804**2.0** — **Applicability** — The requirements of this section apply (1) when an owner of property has  
2805 received notification from a peace officer that chemicals, equipment, or supplies indicative of a  
2806 drug laboratory are located at the property, or 2) when a drug laboratory is otherwise discovered,  
2807 and the owner of the property where the drug laboratory is located has received notice.

2808**3.0** — **Definitions**

2809 “Building” means a structure which has the capacity to contain, and is designed for the shelter of,  
2810 man, animals, or property, or place adapted for overnight accommodations of persons or animals,  
2811 whether or not a person or animal is actually present. “Building” includes manufactured homes  
2812 as defined in Section 38-29-102(6), C.R.S., and mobile homes as defined in Section 38-12-  
2813 201.5(2), C.R.S. —

2814 “Certified Industrial Hygienist” or “CIH” means an individual who is certified by the American  
2815 Board of Industrial Hygiene or its successor.

2816 “Chemical storage area” means any area where chemicals used in the manufacture of  
2817 methamphetamine are stored or have come to be located.

2818 “Cleanup standard” means the numerical value, established in section 7.0 of this regulation, that  
2819 causes the consultant to determine if an area is compliant or noncompliant based on the results  
2820 of sampling conducted in accordance with the sampling procedures presented in Appendix A.  
2821

2822 “Consultant” means a Certified Industrial Hygienist or Industrial Hygienist who is not an  
2823 employee, agent, representative, partner, joint venture participant, shareholder, parent or  
2824 subsidiary company of the contractor.

2825 “Contaminant” means a chemical residue that may present an immediate or long-term threat to  
2826 human health and the environment.  
2827



- 2828 “Contamination” or “Contaminated” means the presence of chemical residues, which may present  
2829 an immediate or long-term threat to human health or the environment.
- 2830 “Contractor” means one or more individuals or commercial entities hired to perform work in  
2831 accordance with the requirements of this regulation.
- 2832 “Cooking area” means any area where methamphetamine manufacturing is occurring or has  
2833 occurred.
- 2834 “Decision level” means that concentration, relative to the cleanup standard, that shall be used to  
2835 distinguish between compliant and non-compliant areas. The calculation for the decision level for  
2836 composite samples is found in Appendix A, Composite Decision Level.
- 2838 “Decontamination” means the process of reducing the level of contamination to the lowest  
2839 practical level using currently available methods. At a minimum, decontamination must reduce  
2840 contamination of specified substances below the concentrations allowed by this regulation.
- 2841 “Demolition” means the wrecking or taking out of any load-supporting structural member,  
2842 including any related handling operations.—
- 2843 “Department” means the Colorado Department of Public Health and Environment.
- 2844 “Disposal” means handling, transportation and ultimate disposition of materials removed from  
2845 contaminated properties.
- 2846 “Documentation” means preserving a record of an observation through writings, drawings,  
2847 photographs, or other appropriate means.—
- 2848 “Encapsulation” means applying a surface sealant to create a physical barrier intended to  
2849 decrease or to eliminate the potential for exposure to residual contaminants that may exist  
2850 beneath the physical barrier even after decontamination.
- 2851 “Functional space” means a space where the spread of contamination may be expected to occur  
2852 relatively homogeneously, compared to other functional spaces. The “functional space” may be a  
2853 single room or a group of rooms, designated by a consultant who, based on professional  
2854 judgment, considers the space to be separate from adjoining areas with respect to contaminant  
2855 migration. Other typical examples of functional spaces include a crawl space, an attic, and the  
2856 space between a dropped ceiling and the floor or roof deck above.—
- 2857 “HEPA filtration” means a filtering system capable of trapping and retaining at least 99.97 percent  
2858 of all monodispersed particles 0.3 microns in diameter or larger.—
- 2859 “Independent” means that a person is not an employee, agent, representative, partner, joint-  
2860 venturer, shareholder, or parent or subsidiary company of another person.
- 2861 “Individual sewage disposal system” or “ISDS” means an absorption system of any size or flow or  
2862 a system or facility for treating, neutralizing, stabilizing, or disposing of sewage which is not part  
2863 of or connected to a sewage treatment works.
- 2864 “Industrial Hygienist” means an industrial hygienist as defined in Section 24-30-1402, C.R.S.

- 2865 “Media” means the physical material onto which a sample substrate is collected. Media includes  
2866 cotton gauze, glass fiber filters, MCE membranes, etc.
- 2867 “Methamphetamine” means dextro-methamphetamine, levo-methamphetamine, and unidentified-  
2868 isomers of the same, any racemic mixture of dextro/levo-methamphetamine, or any mixture of  
2869 unidentified isomers of methamphetamine. The term includes derivatives, conjugates, oxides,  
2870 and reduced forms of the basic structure associated with CAS registration number 537-46-2. For  
2871 the purposes of this regulation, this term also includes amphetamine (CAS 300-62-9), ephedrine-  
2872 (CAS 299-42-3), and pseudoephedrine (CAS 90-82-4).
- 2873 “Microvacuum sample” or “Vacuum sample” means a non-airborne dust sample collected from a  
2874 known surface area of a porous surface or material using standard microvacuum sampling-  
2875 techniques as described in Appendix A of these regulations.
- 2876 “Negative air unit” means a portable exhaust system equipped with HEPA filtration and capable of  
2877 maintaining a constant high velocity airflow out of the contaminated area, resulting in a constant-  
2878 low velocity air flow into the contaminated area from adjacent uncontaminated areas
- 2879 “Person” means any individual, public or private corporation, partnership, association, firm, trust-  
2880 or estate; the state or any executive department, institution, or agency thereof; any municipal-  
2881 corporation, county, city and county, or other political subdivision of the state; or any other legal-  
2882 entity whatsoever which is recognized by law as the subject of rights and duties.
- 2883 “Publicly owned treatment works” or “POTW” means a publicly owned domestic wastewater-  
2884 treatment facility. The term also means the municipality, as defined in 502(4) of the Clean Water  
2885 Act, 33 U.S.C. § 1362(4), which has jurisdiction over the indirect discharges to and the discharge-  
2886 from such treatment works.
- 2887 “Preliminary assessment” means an evaluation of a property to determine the current condition,  
2888 including the nature and extent of observable or detectable contamination, chemical storage and  
2889 disposal.
- 2890 “Property” means anything that may be the subject of ownership or possession, including, but not  
2891 limited to, land, buildings, structures, vehicles and personal belongings.
- 2892 “Property owner” for the purpose of real property, means the person holding fee title to real-  
2893 property. “Property owner” also means the person holding title to a manufactured home. With-  
2894 respect to personal property, the term means the person who lawfully owns such property.
- 2895 “Removal” means the taking out or stripping of material or surfaces to eliminate the potential for  
2896 exposure to contaminants on or in the material or surfaces.
- 2897 “Substrate” means the material being collected. Substrates may include soils, water, painted-  
2898 surfaces, carpet debris, unidentified powders, dust, etc.
- 2899 “Vehicle” means any object defined as a “vehicle” in section 42-1-102, C.R.S. “Vehicle” includes  
2900 recreational vehicles, campers, buses with a toilet and a galley, trailers as defined in section 42-  
2901 1-102(105) C.R.S., trailer coaches as defined in 42-1-102(106)(a) C.R.S., and motor homes as  
2902 defined in § 42-1-102(57), C.R.S.

- 2903 “Waste disposal area” means any area where chemicals used or generated in the manufacture of  
2904 methamphetamine are disposed or have come to be located.
- 2905 “Wipe sample” means a surface sample collected by wiping a sample media on the surface being  
2906 sampled in accordance with Appendix A.
- 2907 **4.0 Preliminary Assessment.** A preliminary assessment shall be conducted by the consultant, in  
2908 accordance with section 6.7 of this regulation, prior to the commencement of property  
2909 decontamination. Information gained during the preliminary assessment shall be the basis for  
2910 property decontamination and clearance sampling. Contractors and consultants shall use  
2911 appropriate personal protective equipment during the preliminary assessment. Access to the  
2912 property shall be limited to those with appropriate training and personal protective equipment.  
2913 Information collected during the preliminary assessment shall include, but not be limited to, the  
2914 following:
- 2915 4.1. Property description including physical address, legal description, number and type of  
2916 structures present, description of adjacent and/or surrounding properties, and any other  
2917 observations made.
- 2918 4.2 Review of available law enforcement reports that provide information regarding the  
2919 manufacturing method, chemicals present, cooking areas, chemical storage areas, and  
2920 observed areas of contamination or waste disposal.
- 2921 4.3. Identification of structural features that may indicate separate functional spaces, such as  
2922 attics, false ceilings and crawl spaces, basements, closets, and cabinets.
- 2923 4.4. Identification of manufacturing methods based on observations and law enforcement  
2924 reports.
- 2925 4.5. Identification of chemicals used, based on observations, law enforcement reports, and  
2926 knowledge of manufacturing method(s).
- 2927 4.6 Identification and documentation of areas of contamination. This identification may be  
2928 based on visual observation, law enforcement reports, proximity to chemical storage  
2929 areas, waste disposal areas, or cooking areas, or based on professional judgment of the  
2930 consultant; or the consultant may determine that assessment sampling is necessary to  
2931 verify the presence or absence of contamination. If the consultant determines that  
2932 assessment sampling is necessary, such sampling shall be conducted in accordance with  
2933 the sampling protocols presented in Appendices A and D. Sample analysis shall be  
2934 conducted in accordance with the method requirements presented in Appendices B and  
2935 D.
- 2936 4.7. Identification and documentation of chemical storage areas.
- 2937 4.8. Identification and documentation of waste disposal areas.
- 2938 4.9. Identification and documentation of cooking areas.
- 2939 4.10. Identification and documentation of signs of contamination such as staining, etching, fire  
2940 damage, or outdoor areas of dead vegetation.

- 2941 4.11. ~~Inspection of plumbing system integrity and identification and documentation of potential~~  
 2942 ~~disposal into the sanitary sewer or an individual sewage disposal system (ISDS). If the~~  
 2943 ~~consultant determines that field screening and/or sampling of an ISDS is necessary to~~  
 2944 ~~determine if methamphetamine lab wastes have been disposed of into an ISDS, such~~  
 2945 ~~field screening and/or sampling shall be conducted in accordance with the field screening~~  
 2946 ~~and sampling protocols presented in Appendix D. Sample analysis shall be conducted in~~  
 2947 ~~accordance with the method requirements presented in Appendices B and D.~~
- 2948 4.12. ~~Identification of adjacent units and common areas where contamination may have spread~~  
 2949 ~~or been tracked.~~
- 2950 4.13. ~~Identification and documentation of common ventilation systems with adjacent units or~~  
 2951 ~~common areas.~~
- 2952 4.14. ~~Photographic documentation of property conditions, including cooking areas, chemical~~  
 2953 ~~storage areas, waste disposal areas, and areas of obvious contamination.~~
- 2954 **5.0 Decontamination Procedures.** ~~Decontamination shall be conducted to reduce the~~  
 2955 ~~concentration of contaminants to the levels specified in Section 7.0 of this regulation.~~  
 2956 ~~Decontamination shall be conducted in accordance with procedures designed to protect workers,~~  
 2957 ~~future occupants, neighbors and the general public, and shall include, but not be limited to, the~~  
 2958 ~~following:~~
- 2959 5.1. ~~A negative air unit, equipped with a HEPA filtration system, shall be used throughout the~~  
 2960 ~~decontamination process to reduce airborne particulates.~~
- 2961 5.2 ~~Detergent water washing of non-porous, porous and semi porous surfaces that are~~  
 2962 ~~contaminated, or that are reasonably expected to be contaminated, that will not be~~  
 2963 ~~removed.~~
- 2964 5.3. ~~Removal of all contaminated material that will not or cannot be decontaminated to~~  
 2965 ~~cleanup standards specified in Section 7.0 of the regulation. Removal of all~~  
 2966 ~~contaminated materials if sampling cannot demonstrate that cleanup standards have~~  
 2967 ~~been met. Any removal of asbestos or lead based paint must be conducted in~~  
 2968 ~~accordance with all Federal, State and local requirements.~~
- 2969 5.4. ~~Encapsulation of porous and semi porous surfaces may be conducted after detergent~~  
 2970 ~~water washing and after clearance sampling has demonstrated that cleanup standards~~  
 2971 ~~have been achieved.~~
- 2972 5.5. ~~Decontamination of ventilation systems by a contractor that is trained and equipped to~~  
 2973 ~~comply with the protocol for ventilation system decontamination presented in Appendix C~~  
 2974 ~~of these regulations.~~
- 2975 5.6. ~~Water flushing of plumbing systems connected to the sanitary sewer to eliminate any~~  
 2976 ~~residual chemicals.~~
- 2977 5.7. ~~Inspection of individual sewage disposal systems (ISDSs) and, if warranted, testing in~~  
 2978 ~~accordance with the protocol presented in Appendix D of these regulations, to determine~~  
 2979 ~~if the ISDS has been impacted by methamphetamine lab derived chemical wastes.~~

- 2980 5.8. ~~Personal Property~~
- 2981 5.8.1 ~~Personal property must either be decontaminated to the cleanup standards specified in~~  
2982 ~~section 7.0 of this regulation, or properly disposed in accordance with these regulations.~~
- 2983 5.8.2 ~~Personal property that will not be disposed of must be sampled in accordance with~~  
2984 ~~procedures described in Appendix A of this regulation. Discrete samples must be~~  
2985 ~~collected from each individual item, except as provided in 5.8.3.~~
- 2986 5.8.3 ~~Composite samples may be collected in accordance with the following procedure.~~  
2987 ~~Composite samples must be taken from items constructed of like materials that are~~  
2988 ~~contained within the same individual functional space (e.g., clothing from a bedroom~~  
2989 ~~closet may be sampled as a composite, fabric furniture within a living room may be~~  
2990 ~~sampled as a composite, draperies within an individual room may be sampled as a~~  
2991 ~~composite, non-porous goods such as wood or metal tables, shelves, cabinets, etc. in the~~  
2992 ~~same room may be sampled as a composite, etc.). A composite sample is considered~~  
2993 ~~representative of contaminant levels on all personal property of that type material within~~  
2994 ~~the same functional space. No more than 5 individual items may be included in any one~~  
2995 ~~composite sample. Should analysis of composite samples from multiple items indicate~~  
2996 ~~methamphetamine levels in excess of the cleanup standard, all items comprising the~~  
2997 ~~composite sample will be considered to be in excess of cleanup standards.~~
- 2998 5.9. ~~Waste management shall be conducted in accordance with the Colorado Hazardous~~  
2999 ~~Waste Regulations (6 CCR 1007-3) and the Colorado Solid Waste Regulations (6 CCR~~  
3000 ~~1007-2). Debris and contaminated material generated during methamphetamine lab~~  
3001 ~~decontamination shall be managed as solid waste, with notification provided to the landfill~~  
3002 ~~for methamphetamine lab contaminated material. Wash water can be containerized for~~  
3003 ~~offsite disposal, or disposed to the sanitary sewer with approval from the POTW. Wastes~~  
3004 ~~removed from ISDSs shall be disposed of as either solid or hazardous waste based on~~  
3005 ~~results of laboratory analysis as described in Appendix D of these regulations.~~
- 3006 5.10. ~~Any demolition of all or part of a structure shall be conducted in accordance with all local~~  
3007 ~~State and Federal requirements.~~
- 3008 **6.0 ~~Sampling and Analytical Procedures.~~**
- 3009 6.0.1 ~~Except as provided in 6.0.2, assessment sampling shall be conducted as part of the~~  
3010 ~~preliminary assessment to characterize the nature and extent of contamination.~~  
3011 ~~Assessment sampling and laboratory analysis shall be conducted in accordance with~~  
3012 ~~Appendices A, B and D of these regulations.~~
- 3013 6.0.2 ~~As provided in Appendix A of these regulations, the consultant may determine that some~~  
3014 ~~areas should be deemed to be contaminated based on data other than assessment~~  
3015 ~~sampling. Areas that are deemed to be contaminated do not need to be sampled as part~~  
3016 ~~of the preliminary assessment.~~
- 3017 6.0.3 ~~Post-decontamination clearance sampling shall be conducted to verify that cleanup~~  
3018 ~~standards have been met. Sample collection and laboratory analysis shall be conducted~~  
3019 ~~in accordance with the procedures set forth in Appendices A, B and D of these~~  
3020 ~~regulations.~~

- 3021 6.1. ~~Locations of samples shall be based on information gathered during the preliminary~~  
 3022 ~~assessment. Samples shall be collected from:~~
- 3023 6.1.1. ~~Areas expected to have the highest levels of contamination, such as cooking~~  
 3024 ~~areas, chemical storage areas, and waste disposal areas.~~
- 3025 6.1.2. ~~Areas where contamination may have migrated, such as adjacent rooms or units,~~  
 3026 ~~common areas, and ventilation systems.~~
- 3027 6.2. ~~The number and type of samples shall be based on the size of the area or material, the~~  
 3028 ~~chemical or contaminant being tested for, and the purpose of the sample (i.e., initial~~  
 3029 ~~assessment or final clearance).~~
- 3030 6.2.1. ~~Discrete sampling is required in all cases, except as provided in 6.2.2 of these~~  
 3031 ~~regulations.~~
- 3032 6.2.2. ~~Composite sampling may only be conducted in situations where contamination is~~  
 3033 ~~expected to be relatively evenly dispersed throughout a given area, and~~  
 3034 ~~composite sampling will provide an accurate representation of the area sampled,~~  
 3035 ~~as described in Appendix A.~~
- 3036 6.3. ~~Sample handling, including labeling, preservation, documentation, and chain of custody,~~  
 3037 ~~shall be conducted in a manner consistent with the requirements of the analytical method~~  
 3038 ~~being used.~~
- 3039 6.4. ~~Analytical methods shall be based on the compound being sampled for. Sample analysis~~  
 3040 ~~shall be conducted in accordance with the method requirements presented in Appendices~~  
 3041 ~~B and D of these regulations.~~
- 3042 6.5 ~~If the property has an ISDS, evaluation and sampling of the ISDS shall be conducted in~~  
 3043 ~~accordance with Appendix D of these regulations. The investigation and cleanup of soil,~~  
 3044 ~~surface water and groundwater contamination resulting from disposal of~~  
 3045 ~~methamphetamine lab wastes into an ISDS shall be conducted in accordance with either~~  
 3046 ~~the Colorado Hazardous Waste Regulations, or the Colorado Solid Waste Regulations,~~  
 3047 ~~as appropriate based on sampling results, and with Water Quality Control Commission~~  
 3048 ~~Regulations 31 and 41.~~
- 3049 6.6. ~~Quality Control/Quality Assurance (QA/QC) samples, including sample blanks, field~~  
 3050 ~~duplicates, matrix spike and matrix spike duplicates, shall be collected and/or analyzed~~  
 3051 ~~as specified in the sampling and analysis protocols presented in Appendices A, B and D~~  
 3052 ~~of these regulations. Laboratory QA/QC shall be conducted in accordance with method~~  
 3053 ~~requirements as specified in Appendix B of these regulations.~~
- 3054 6.7. ~~To prevent any real or potential conflicts of interest, consultants conducting preliminary~~  
 3055 ~~assessments and post-cleanup assessments must be independent of the company or~~  
 3056 ~~entity that will subsequently conduct the drug lab cleanup, except as provided in 6.7.1.~~
- 3057 6.7.1 ~~Consultants need not be independent of the company or entity that will subsequently~~  
 3058 ~~conduct the drug lab cleanup if both the consultant and the cleanup entity are employees~~  
 3059 ~~of the property owner, provided the property owner was not involved in drug~~  
 3060 ~~manufacturing that resulted in contamination of the property.~~

~~3061~~**7.0** ~~—~~ **Cleanup standards.** The following cleanup standards shall be used to determine if a property has been adequately decontaminated. They may also be used during the preliminary assessment to demonstrate that a property, or portion of a property, is not contaminated. All properties must meet the cleanup standard for methamphetamine. Additional cleanup standards that may be applied to a property shall be based on information gained during the preliminary assessment. —

~~3067~~ 7.1. ~~—~~ Surface wipe samples and vacuum samples for methamphetamine shall not exceed a concentration of 0.5 µg /100 cm<sup>2</sup>.

~~3069~~ 7.2. ~~—~~ If there is evidence of iodine contamination on materials or surfaces that will not be removed, surface wipe samples for iodine shall not exceed a concentration of 22 µg/100 cm<sup>2</sup>.

~~3072~~ 7.3. ~~—~~ If the preliminary assessment indicates the phenyl-2-propanone (P2P) method of methamphetamine manufacturing was used, surface wipe samples for lead shall not exceed a concentration of 40 µg /ft<sup>2</sup>, and vapor samples for mercury shall not exceed a concentration of 1.0 µg /m<sup>3</sup>.

~~3076~~ 7.4. ~~—~~ The investigation and cleanup of outdoor contamination, including soil, surface water and groundwater, shall be conducted in accordance with the Colorado Hazardous Waste Regulations, the Colorado Solid Waste Regulations, and Water Quality Control Commission Regulations 31 and 41.

~~3080~~**8.0** ~~—~~ **Reporting.** A final report shall be prepared by the consultant to document the decontamination process and demonstrate that the property has been decontaminated to the cleanup standards listed in Section 7.0 of these regulations. The final report shall include, but not be limited to, the following:—

~~3084~~ 8.1. ~~—~~ Property description including physical address, legal description, ownership, number and type of structures present, description of adjacent and/or surrounding properties, and any other observations made.

~~3087~~ 8.2. ~~—~~ Description of manufacturing methods and chemicals used, based on observations, law enforcement reports and knowledge of manufacturing method.

~~3089~~ 8.3. ~~—~~ If available, copies of law enforcement reports that provide information regarding the manufacturing method, chemicals present, cooking areas, chemical storage areas, and observed areas of contamination or waste disposal.

~~3092~~ 8.4. ~~—~~ A description of chemical storage areas, with a figure documenting location(s).

~~3093~~ 8.5. ~~—~~ A description of waste disposal areas, with a figure documenting location(s).

~~3094~~ 8.6. ~~—~~ A description of cooking areas, with a figure documenting location(s).

~~3095~~ 8.7. ~~—~~ A description of areas with signs of contamination such as staining, etching, fire damage, or outdoor areas of dead vegetation, with a figure documenting location(s).

~~3097~~ 8.8. ~~—~~ The results of inspection of plumbing system integrity and identification of sewage disposal mechanism.

- 3099 8.9. ~~A description of adjacent units and common areas where contamination may have~~  
3100 ~~spread or been tracked.~~
- 3101 8.10. ~~Identification of common ventilation systems with adjacent units or common areas.~~
- 3102 8.11. ~~A description of the sampling procedures used, including sample collection, handling, and~~  
3103 ~~QA/QC.~~
- 3104 8.12. ~~A description of the analytical methods used and laboratory QA/QC requirements.~~
- 3105 8.13. ~~A description of the location and results of initial sampling (if any), including a description~~  
3106 ~~of sample locations and a figure with sample locations and identification.~~
- 3107 8.14. ~~A description of the health and safety procedures used in accordance with OSHA~~  
3108 ~~requirements.~~
- 3109 8.15. ~~A description of the decontamination procedures used and a description of each area that~~  
3110 ~~was decontaminated.~~
- 3111 8.16. ~~A description of the removal procedures used and a description of areas where removal~~  
3112 ~~was conducted, and the materials removed.~~
- 3113 8.17. ~~A description of the encapsulation procedures used and a description of the areas and/or~~  
3114 ~~materials where encapsulation was performed.~~
- 3115 8.18. ~~A description of the waste management procedures used, including handling and final~~  
3116 ~~disposition of wastes.~~
- 3117 8.19. ~~A description of the location and results of post-decontamination samples, including a~~  
3118 ~~description of sample locations and a figure with sample locations and identification.~~
- 3119 8.20. ~~Photographic documentation of pre- and post-decontamination property conditions,~~  
3120 ~~including cooking areas, chemical storage areas, waste disposal areas, areas of obvious~~  
3121 ~~contamination, sampling and decontamination procedures, and post-decontamination~~  
3122 ~~conditions.~~
- 3123 8.21. ~~Consultant statement of qualifications, including professional certification or qualification~~  
3124 ~~as an industrial hygienist as defined in section 24-30-1402, C.R.S., and description of~~  
3125 ~~experience in assessing contamination associated with methamphetamine labs.~~
- 3126 8.22. ~~Certification of procedures and results, and variations from standard practices.~~
- 3127 8.23. ~~A signed certification statement in one of the following forms, as appropriate:~~
- 3128 ~~—————"I do hereby certify that I conducted a preliminary assessment of the subject property in~~  
3129 ~~accordance with 6 CCR 1014-3, § 4, and that I conducted post-decontamination~~  
3130 ~~clearance sampling in accordance with 6 CCR 1014-3, § 6. I further certify that the~~  
3131 ~~property has been decontaminated in accordance with the procedures set forth in 6 CCR~~  
3132 ~~1014-3, § 5, and that the cleanup standards established by 6 CCR 1014-3, § 7 have been~~  
3133 ~~met as evidenced by testing I conducted."~~



3134 \_\_\_\_\_ "I do hereby certify that I conducted a preliminary assessment of the subject property in  
 3135 accordance with 6 CCR 1014-3, § 4. I further certify that the cleanup standards  
 3136 established by 6 CCR 1014-3, § 7 have been met as evidenced by testing I conducted."

3137 8.24. \_\_\_\_\_ Signature of the consultant. \_\_\_\_\_

3138 8.25. \_\_\_\_\_ The property owner and consultant shall each retain a copy of the report for a period of  
 3139 seven years.

3140 8.26 \_\_\_\_\_ To obtain the immunity provided in § 25-18.5-103(2), C.R.S., the owner must provide a  
 3141 copy of the report to the governing body. It is advisable to submit the report by certified  
 3142 mail, return receipt requested, or some other method that provides an acknowledgement  
 3143 of receipt by the governing body.

3144 **9.0 Referenced Materials.** These regulations incorporate by reference (as identified within)  
 3145 materials originally published elsewhere. These regulations do not include later amendments to  
 3146 or editions of the incorporated materials. The Department of Public Health and Environment  
 3147 maintains copies of the complete text of the incorporated materials for public inspection during  
 3148 regular business hours, and shall provide certified copies of any non-copyrighted material to the  
 3149 public at cost upon request.

3150 Information regarding how the incorporated materials may be obtained or examined is available  
 3151 from: \_\_\_\_\_

3152 \_\_\_\_\_ Division Director  
 3153 \_\_\_\_\_ Hazardous Materials Waste Management Division HMWMD-B2  
 3154 \_\_\_\_\_ Colorado Department of Public Health and Environment  
 3155 \_\_\_\_\_ 4300 Cherry Creek Drive South  
 3156 \_\_\_\_\_ Denver, CO 80246  
 3157 \_\_\_\_\_  
 3158 \_\_\_\_\_

3159 Copies of the incorporated materials have been provided to the State Publications Depository and  
 3160 Distribution Center, and are available for interlibrary loan. The incorporated materials may be  
 3161 examined at any state publications depository library.

3162

**List of Materials Incorporated by Reference**

3163

3164

American Society for Testing and Materials (ASTM) Method D3278-96e1 (October 1997),  
Standard Test Methods for Flash Point of Liquids by Setaflash Closed Tester.

3165

3166

3167

American Society for Testing and Materials (ASTM) Method D5756-02 (November 2002),  
Standard Test Method for Microvacuum Sampling and Indirect Analysis of Dust by Transmission-  
Electron Microscopy for Asbestos Mass Concentration.

3168

3169

American Society for Testing and Materials (ASTM) Method D93-02a (December 2002), Standard  
Test Methods for Flash Point by Pensky-Martens Closed Tester.

3170

3171

Field Manual for Grid Sampling of PCB Spill Sites to Verify Cleanup, EPA-560/5-86-017 (May-  
1986).

3172

3173

3174

3175

National Institute for Occupational Safety and Health (NIOSH), U.S. Department of Health and  
Human Services (DHHS), NIOSH Manual of Analytical Methods (NMAM), 4th. Ed., DHHS-  
(NIOSH) Publication No. 94-113 (August, 1994), 1<sup>st</sup> supplemental publication 96-135 (1996), 2<sup>nd</sup>-  
supplement publication 98-119 (1998):

3176

Method 6009, Mercury (Issue 2, August 1994).

3177

Method 9100, Lead in Surface Wipe Samples (Issue 2, May 1996).

3178

3179

3180

3181

Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, EPA Publication SW-846-  
[Third Edition (November 1986), as amended by Updates I (dated July 1992), II (dated  
September 1994), IIA (dated August 1993), IIB (dated January 1995), III (dated December 1996)-  
and IIIA (dated April 1998)]:

3182

3183

Method 1010, Pensky-Martens Closed-Cup Method for Determining Ignitability (Revision-  
O, September 1986).

3184

3185

Method 1020A, Setaflash Close-Cup Method for Determining Ignitability (Revision 1, July-  
1992).

3186

Method 1110, Corrosivity Toward Steel (Revision O, September 1986).

3187

3188

Method 6020, Inductively Coupled Plasma—Mass Spectrometry (Revision O, September  
1994).

3189

3190

Method 8260B, Volatile Organic Compounds by Gas Chromatography/Mass-  
Spectrometry (GC/MS) (Revision 2, December 1996).

3191

3192

Method 9014, Titrimetric and Manual Spectrophotometric Determinative Methods for  
Cyanide (Revision O, December 1996).

3193

Method 9021, Purgeable Organic Halides (POX) (Revision O, December 1996).

3194

3195

Method 9034, Titrimetric Procedure for Acid-Soluble and Acid-Insoluble Sulfides—  
(Revision O, December 1996).

134

3196            ~~Method 9040B, pH Electrometric Measurement (Revision 2, January 1995).~~

3197

**APPENDIX A**

3198

**METHAMPHETAMINE LABORATORIES**

3199

**SAMPLING METHODS AND PROCEDURES**

3200

3201

**Purpose**

3203The purpose of this appendix is to provide a procedure for reducing variability in the collection of samples  
 3204in the characterization of contaminants at illegal drug laboratories. Additional discussion of the sampling  
 3205theory for sampling techniques described in this appendix are provided in the attachment at the end of  
 3206this appendix.—

3207

**Pre-decontamination sampling**

3209In pre-decontamination sampling, the assumption (hypothesis) is made that the area is clean i.e.—  
 3210“compliant,” and data will be collected to find support for the hypothesis. Data (such as samples) are  
 3211collected to “prove” the area is compliant. Sampling, if it is performed, is conducted in the areas with the  
 3212highest probability of containing the highest possible concentrations of contaminants. Any data that  
 3213disproves the hypothesis, including police records, visual clues of production, storage, or use or  
 3214documentation of drug paraphernalia being present, is considered conclusive, and leads the consultant to  
 3215accept the null hypothesis and declare the area non-compliant.—

3216

**Post-Decontamination sampling**

3218In post-decontamination sampling, the hypothesis is made that the area is non-compliant, and data is  
 3219collected to test the hypothesis. The role of the consultant in post decontamination sampling is not to  
 3220demonstrate that the area is “clean,” but rather, using biased sampling, to diligently attempt to prove that  
 3221the area is not clean. The lack of data supporting the hypothesis leads the consultant to accept the null  
 3222hypothesis and conclude that the area is compliant.—

3223

**Decision Statement**

3225If, based on the totality of the circumstances, the consultant finds that insufficient evidence exists to  
 3226support the hypothesis that any given area is non-compliant, that area shall be deemed to be compliant  
 3227with section 25-18.5-103 (2), C.R.S., and shall be released. If objective sampling data indicates  
 3228contamination is less than the cleanup standard, that data may be used as *prima facie* evidence that  
 3229insufficient evidence exists to support the hypothesis that any given area is non-compliant.—

3230

**Area Samples**

3232

**Buildings and Structures**

3234——— Wipe Sample and/or Vacuum Sample—

3235For drug laboratories, as defined in section 25-18.5-101, C.R.S., whose structural floor plan is not greater  
 3236than 1,500 square feet, surface sampling shall be collected according to the following schedule.—

3237Exception: for pre-decontamination scenarios, any and all other data may be used in lieu of sampling to  
 3238reject the hypothesis and deem the area to be contaminated.—

3239

3240

- For any given *functional space*, at least 500 cm<sup>2</sup> of surface shall be sampled, unless the area is assumed to be non-compliant.—

3241

3242

- At least 1,000 cm<sup>2</sup> of total surface area must be sampled for any single laboratory identified pursuant to section 25-18.5-103, C.R.S.—

3243

138

- 3244 •—An additional 100 cm<sup>2</sup> must be sampled for every additional 500 square feet of structural floor  
3245 space.—
- 3246 •—No fewer than five samples shall be collected from any laboratory identified pursuant to section—  
3247 25-18.5-103, C.R.S.  
3248
- 3249The required sample area shall be composed of no fewer than three discrete samples. Should composite  
3250samples be collected, each composite shall consist of no greater than five discrete samples collected in—  
3251accordance with the procedures outlined in the section in this appendix on Composite Sampling.—
- 3252
- 3253Where the drug laboratory is located in a structure other than a single family dwelling, the potential of—  
3254fugitive emissions must be considered. For example, if the functional space was located in an hotel room,  
3255and evidence of contamination extended into the corridor, the elevator, the lobby, and one adjacent room,  
3256there would be four separate functional spaces to evaluate: 1) The primary hotel room, 2) the—  
3257corridor/elevator complex 3) the lobby, 4) the adjacent hotel room.—
- 3258
- 3259Each functional space exhibiting indicia of contamination shall be sampled. For example, where a single—  
3260family dwelling meets the definition of a drug laboratory, and an associated detached garage contains—  
3261indicia of contamination, the dwelling and the garage shall be evaluated separately.
- 3262
- 3263Vehicles
- 3264—Wipe Sample and/or Vacuum Sample—
- 3265For drug laboratories in vehicles, surface sampling shall be collected according to the following schedule.—  
3266Exception: for pre-decontamination scenarios, any and all other data may be used in lieu of sampling to—  
3267reject the hypothesis and deem the area to be contaminated.—
- 3268 •—A minimum of 500 cm<sup>2</sup> of surface shall be sampled, unless the area is assumed to be non—  
3269 compliant.—
- 3270 •—An additional 100 cm<sup>2</sup> must be sampled for every 50 square feet of structural floor space for any—  
3271 large vehicle, such as a recreational vehicle, motor home, trailer, or camper.—
- 3272 •—No fewer than three samples shall be collected from any laboratory identified in a vehicle.—  
3273
- 3274The required sample area shall be composed of no fewer than three discrete samples. Should composite  
3275samples be collected, each composite shall consist of no greater than five discrete samples collected in—  
3276accordance with the procedures outlined in the section in this appendix on Composite Sampling.—
- 3277
- 3278Sampling Procedures
- 3279
- 3280Non-Porous Surfaces - Wipe Samples
- 3281Wipe sampling shall be used to determine the extent of contamination on non-porous surfaces. Wipe—  
3282samples shall be collected in accordance with the procedures set forth below for either discrete or—  
3283composite samples.—
- 3284Sample media may consist of one of the following:—
- 3285 •—Gauze material, including Johnson & Johnson cotton squares or equivalent.—

- 3286 • ~~Filter paper, including Whatman 40, 41, 42, 43, 44, 540, 541, Ahlstrom 54, VWR 454, S&S WH-~~  
 3287 ~~Medium, or other filter paper with equivalent performance.~~

3288

3289 ~~The following procedure is for collecting discrete wipe samples from non-porous surfaces.~~

- 3290 1. ~~Attach disposable templates or masking tape to the area(s) to be sampled, being careful not the-~~  
 3291 ~~touch the area within the template. The sample area shall be 100 cm<sup>2</sup> (10cm by 10cm) or a~~  
 3292 ~~multiple of 100 cm<sup>2</sup>.~~

3293 ~~Prepare a rough sketch of the area(s) to be sampled.~~

- 3294 2. ~~The sample media should be wetted with distilled water or solvent (isopropyl alcohol or methanol)~~  
 3295 ~~to enhance collection efficiency.~~

- 3296 3. ~~Use a new set of clean, non-powdered impervious gloves for each sample to avoid contamination~~  
 3297 ~~of the sample media by previous samples and to prevent contact with the substance.~~

- 3298 4. ~~Press the sample media down firmly, but not excessively, with the fingers, being careful not to~~  
 3299 ~~touch the sample surface with the thumb. Blot rough surfaces uniformly instead of wiping. Wipe~~  
 3300 ~~smooth surfaces as described below.~~

- 3301 5. ~~Wiping may be done by one of the following methods:~~

- 3302 a. ~~Square method: Start at the outside edge and progress toward the center of the surface~~  
 3303 ~~area by wiping in concentric squares of decreasing size.~~

- 3304 b. ~~"S" method: Wipe horizontally from side to side in an overlapping "S" like pattern as~~  
 3305 ~~necessary to completely cover the entire wipe area.~~

- 3306 6. ~~Without allowing the sample media to come into contact with any other surface, fold the sample~~  
 3307 ~~media with the sampled side in.~~

- 3308 7. ~~Use the same sample media to repeat the sampling of the same area. If using the "S" method,~~  
 3309 ~~the second pass shall be sampled by wiping with overlapping "S" like motions in a top to bottom~~  
 3310 ~~direction.~~

- 3311 8. ~~Fold the sample media over again so that the sampled side is folded in. Place the sample media~~  
 3312 ~~in a sample container, cap and number it, and note the number at the sample location on the~~  
 3313 ~~sketch. Include notes with the sketch giving any further description of the sample.~~

- 3314 9. ~~At least one sample media blank, treated in the same fashion but without wiping, should be~~  
 3315 ~~submitted for every 10 samples collected.~~

3316 ~~When collecting composite samples, the procedure outlined above shall be used with the following~~  
 3317 ~~exceptions:~~

- 3318 1. ~~A single pair of gloves may be used to collect each single sample that will be part of a composite~~  
 3319 ~~sample. However, a new pair of gloves must be used for each set of composite samples.~~

- 3320 2. ~~All individual samples that make up a composite sample must be placed in one sample container.~~

3321

~~3322~~**Porous Surfaces—Vacuum Sampling**

~~3323~~Vacuum sampling shall be used to determine the extent of contamination on porous surfaces, including  
~~3324~~carpeting, drapery, upholstery, clothing, and other soft goods. Vacuum samples shall be collected in  
~~3325~~accordance with procedures for sample collection described in section 9 of the American Society for  
~~3326~~Testing and Materials (ASTM) Method D5756-02, *Standard Test Method for Microvacuum Sampling and*  
~~3327~~*Indirect Analysis of Dust by Transmission Electron Microscopy for Asbestos Mass Concentration*. Vacuum  
~~3328~~samples will be analyzed for methamphetamine and/or derivatives in accordance with analytical methods  
~~3329~~described in Appendix B of this regulation.

~~3330~~Wipe sampling of porous surfaces may be conducted during the preliminary assessment, in lieu of  
~~3331~~vacuum sampling, in order to obtain a qualitative (absence or presence) identification of a chemical.—  
~~3332~~Wipe sampling shall not be used to demonstrate that cleanup standards have been met on porous  
~~3333~~surfaces.—

3334—

~~3335~~**Outdoors**

~~3336~~For laboratories with outdoor components, or laboratories which are exclusively outdoors, the following  
~~3337~~sampling shall be performed when conditions indicate the potential for soil contamination. Sampling shall  
~~3338~~be conducted in accordance with the grid sampling method as described in the Midwest Research  
~~3339~~Institute's publication titled "Field Manual for Grid Sampling of PCB Spill Sites to Verify Cleanup"  
~~3340~~(referenced in 40 CFR § 761.130), which is incorporated herein by reference. Surface samples shall be  
~~3341~~taken to a depth of no greater than 8 cm. Sample volume should be at least 100 cm<sup>3</sup> and no more than  
~~3342~~250 cm<sup>3</sup>. (Guidance on soil sampling can be found in ASTM D5730, ASTM E1727, ASTM D4700, and  
~~3343~~the EPA Environmental Investigations Standard Operating Procedures and Quality Assurance—  
~~3344~~(EISOPQA) Manual. Additional subsurface samples may be required.

3345

~~3346~~Other outdoor surfaces should be evaluated based on best professional judgment. Wipe samples and  
~~3347~~destructive samples may be required.

3348

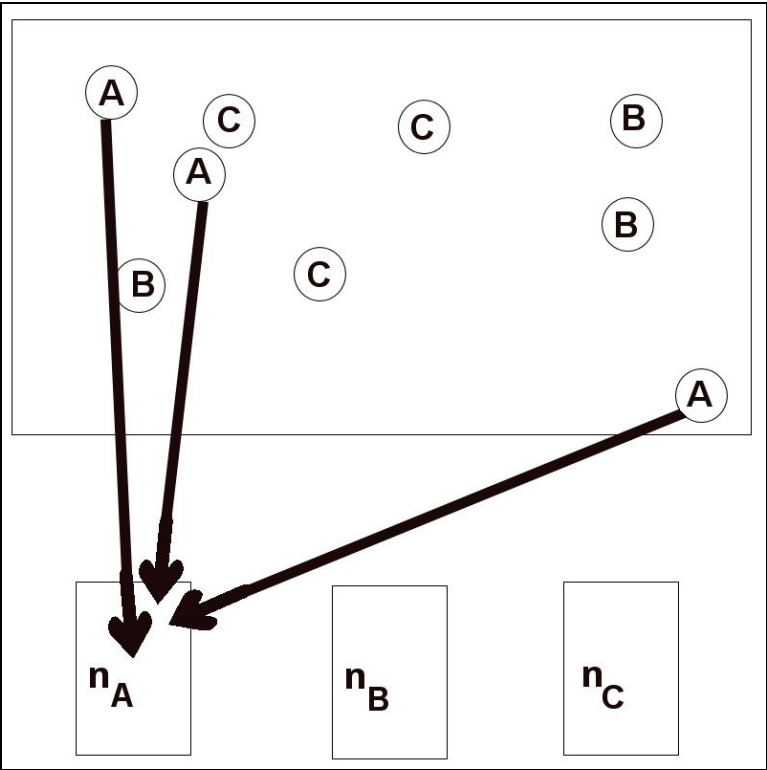
~~3349~~**Composite Sampling**

~~3350~~Composite sampling is permitted by this regulation, as described herein. The consultant may not use  
~~3351~~composite sampling unless in their professional judgment, contamination is expected to be relatively  
~~3352~~evenly dispersed throughout a given area, such that the sampling will accurately represent the conditions  
~~3353~~of the drug laboratory. If compositing is used, then the composite shall consist of no greater than five  
~~3354~~discrete samples. Any composite sampling must consist of like media, matrices or substrates. The mixing  
~~3355~~of media, matrices or substrates is not permitted. All individual samples (designated as *g*), from which  
~~3356~~any single composite is formed must be of equal volume (for liquids), equal surface area (for surface wipe  
~~3357~~sampling or vacuum sampling) or equal weight (for solids).

~~3358~~Composite sampling may be implemented using one of the following sampling designs. The consultant  
~~3359~~shall chose the sampling design based upon the specific conditions of the drug laboratory being  
~~3360~~assessed.

Simple Random Composite Sampling

Figure 1A below illustrates a simple random composite sampling design. In this figure, the sampled area could represent any surface or media about which a decision must be made (such as a series of walls, or carpeting or even contaminated soils).



**Figure 1A-  
Example of Random Sample Composites**

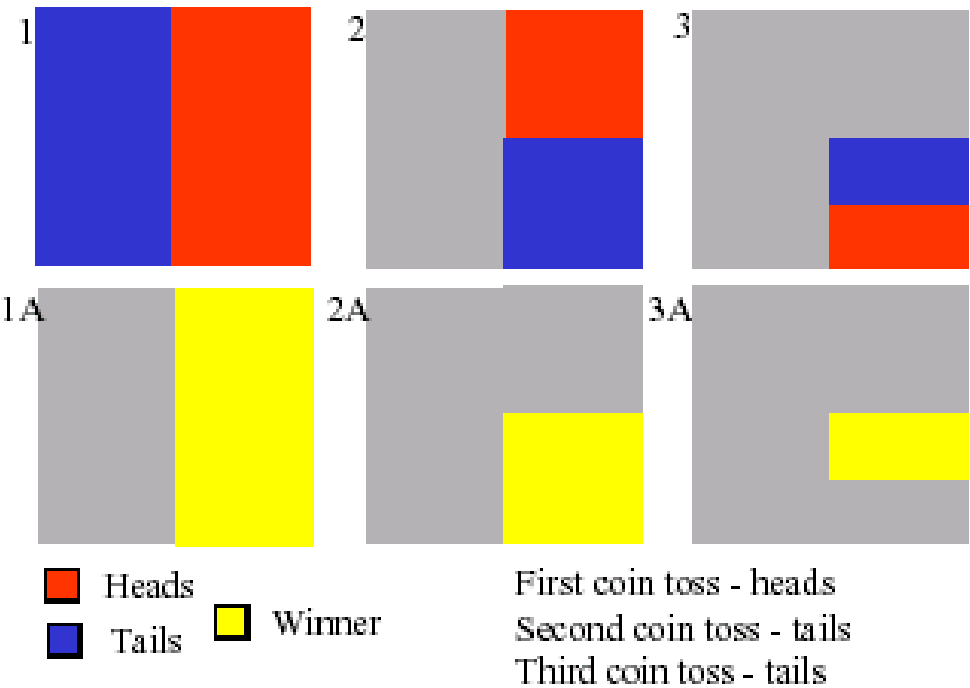
In the above example, nine individual samples ( $n \times g = 9$ ) are composited into three samples for submission to a laboratory ( $X_A, X_B, X_C$ ).

The individual sample locations can be selected by any number of methods such as those as described in American Society for Testing and Materials (ASTM) Method D6051-96 (2001), *Standard Guide for Composite Sampling and Field Subsampling for Environmental Waste Management Activities*. The “system of halves” as described in 40 CFR § 761.306 may also be used. An example of the “system of halves” is provided below and illustrated in Figures 1B and 1C.

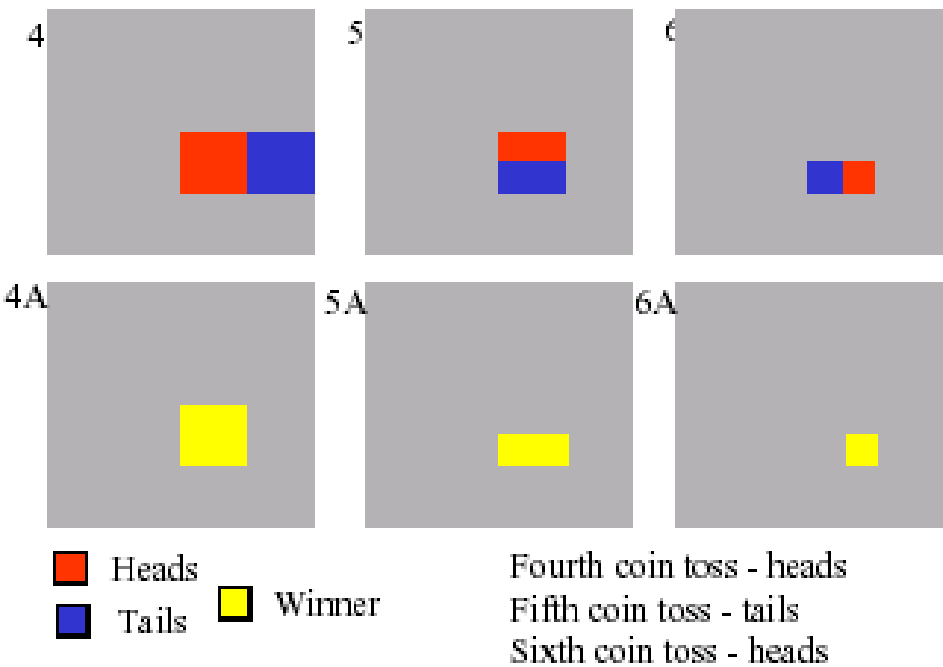
- 1.—Select the surface which represents the area of highest possible contamination
- 2.—Delineate one square meter within the area
- 3.—Divide the one square meter area in half with an imaginary line in any direction



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- 3388
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- 3390
4. Assign each half "heads" or "tails"
5. Flip a coin
6. Divide the "winning side" in half with an imaginary line in any direction
7. Flip a coin
8. Continue dividing the "winning" side until the winning side is between 100 cm<sup>2</sup> and 200 cm<sup>2</sup> and collect the wipe sample from that area
9. The method is repeated for each individual (g) of the composite



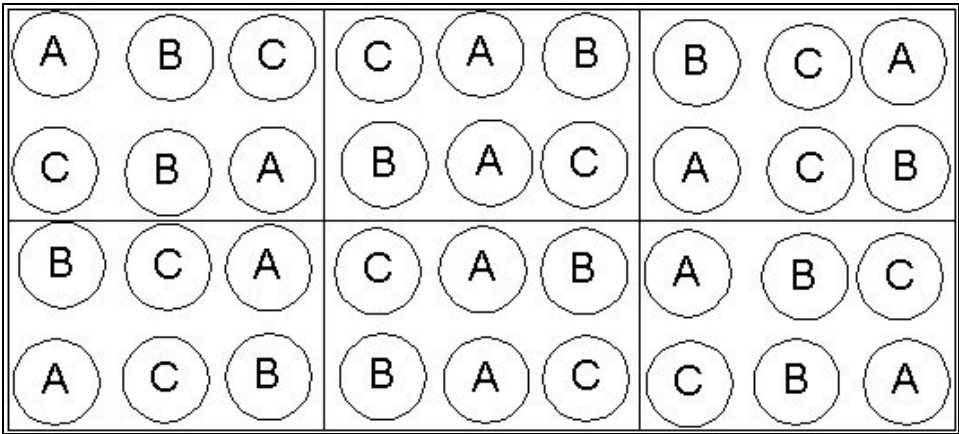
**Figure 1B**  
**Example of Random Sample Composites**



**Figure 1C**  
**Example of Random Sample Composites**

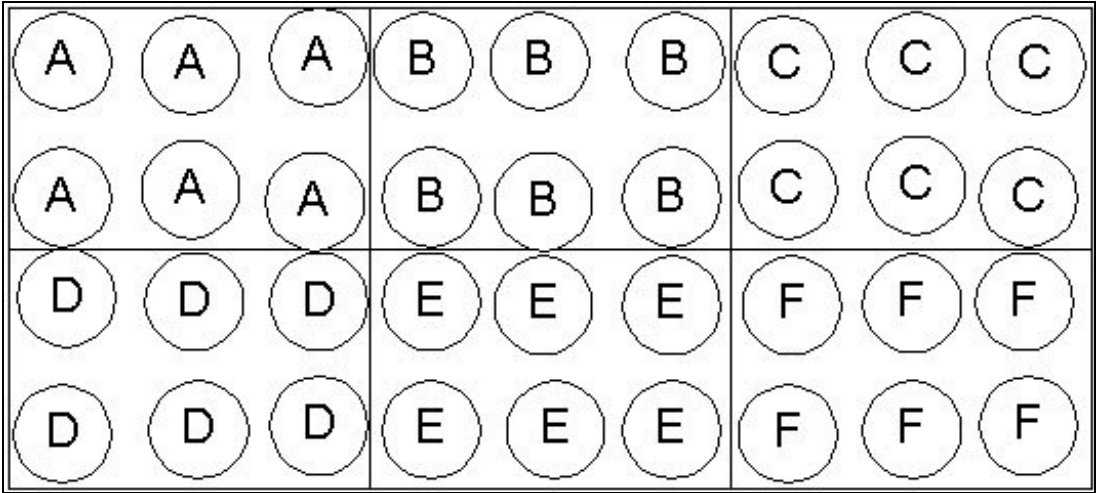
**Systematic Composite Sampling**

A systematic composite sampling design is illustrated in Figure 2. Each field sample collected at the “A” locations is pooled and mixed into one composite sample. The process is then repeated for “B,” “C,” “D” locations and so on. The relative location and size of each individual field sample (such as “A”) should be the same within each block.



**Figure 2**  
**Example “A” of Systematic Sample Composites**

3411A second systematic composite design is illustrated in Figure 3. This sample design involves collecting  
3412and pooling samples from *within* a grid (See Figure 3). Each field sample collected at the “A” locations is  
3413pooled and mixed into one composite sample. The process is then repeated for “B,” “C,” “D” locations  
3414and so on. The relative location and size of each individual field sample (such as “A”) should be the same  
3415within each block.—



3416  
3417  
3418  
3419  
**Figure 3**  
**Example “B” of Systematic Sample Composites**

3420  
3421For both assessment and post-decontamination sampling, either simple random composite sampling or  
3422systematic composite sampling may be used where contamination is expected to be relatively evenly  
3423dispersed throughout a given area, as described above, except the consultant shall selectively choose  
3424sample locations that represent the highest potential contamination, in accordance with the hypothesis  
3425being tested.

3426-  
3427       **Composite Decision Level**  
3428If composite sampling is used, the following procedure shall be used for detecting hot spots to determine  
3429if one or more of the individual samples making up the composite could exceed the cleanup standard, but  
3430remain undetected due to “dilution” that results from the compositing process.

3431  
3432       The approach assumes the underlying distribution is normal and the composite samples were  
3433       formed from equal-sized individual samples. In the following equations, CL represents the  
3434       cleanup standard that cannot be exceeded in any individual sample. It is assumed that the  
3435       analytical limit of quantification, or quantitation limit (QL), is less than the cleanup standard. For  
3436       any laboratory result ( $X_i$ ) from a composite sample formed from individual samples ( $g$ ), the  
3437       following rules shall be assumed:-

- 3438 1) If  $X_i < \frac{CL}{g}$  then no individual sample ( $g$ ) shall be deemed greater than the CL
- 3439 2) If  $X_i > CL$  then at least one sample *must* be, and as many as all individual samples *may* be
- 3440 greater than the CL
- 3441
- 3442 If it is determined that one or more individual samples making up the composite exceeds the cleanup
- 3443 standard, all areas represented by the composite sample shall be considered to exceed the cleanup
- 3444 standard unless a discrete sample of any individual area demonstrates that the cleanup standard has
- 3445 been met in that area.

3446

**ATTACHMENT TO APPENDIX A**

3447

**METHAMPHETAMINE LABORATORIES**

3448

**SAMPLING METHODS AND PROCEDURES**

3449

**SAMPLING THEORY**

3450

3451

**3452 Sampling Theory**

3453 The type of sampling used for stationary structures and vehicles described in this protocol is a type of  
 3454 sampling recognized as “authoritative” sampling. Authoritative sampling is a nonstatistical sampling-  
 3455 design that does not assign an equal probability of being sampled to all portions of the population.—  
 3456 Consultants using this protocol will have *a priori* knowledge of the property to be sampled. The *a priori*-  
 3457 knowledge, in the hands of a competent consultant, permits immediate inclusion/exclusion of sampling-  
 3458 areas, based on professional judgment. As such, the weight of validity of the data gathered with-  
 3459 authoritative sampling is largely dependent on the knowledge and competency of the sampler.—

3460 With authoritative sampling, it is not possible to accurately estimate the concentration variance within a-  
 3461 property as a whole. Also, due to its subjective nature, the use of authoritative sampling to demonstrate-  
 3462 compliance with a regulatory standard is generally not advisable except in those cases that are-  
 3463 anticipated to be well defined (small volumes of waste and where contaminants in the property under-  
 3464 study is either well above or well below the cleanup standard). The American Society for Testing and-  
 3465 Materials (ASTM) Method D6311-98 (2003), *Standard Guide for Generation of Environmental Data-*  
 3466 *Related to Waste Management Activities: Selection and Optimization of Sampling Design*, recognizes two  
 3467 types of authoritative sampling: judgmental sampling and biased sampling; both of these sampling-  
 3468 theories are used in this protocol.

3469

**3470 Judgmental Sampling**

3471 The goal of judgmental sampling is to use process or site knowledge to choose one or more sampling-  
 3472 locations to represent the “average” concentration within the context of the sampling area. Judgmental-  
 3473 sampling designs can be extremely useful and cost-effective if the consultant choosing the sampling-  
 3474 locations has sufficient knowledge of the history of the drug laboratory under study. It is recognized that-  
 3475 the sampling method is not entirely objective since the consultant choosing the sampling locations could-  
 3476 possibly intentionally distort the sampling by a prejudiced selection, or if their knowledge in the drug-  
 3477 laboratory in question is wanting. In those cases, judgmental sampling can lead to incorrect results being-  
 3478 presented to the consultant.—

3479

**3480 Biased Sampling**

3481 *Biased* sampling is the type of authoritative sampling that intends not to estimate average concentrations-  
 3482 or typical properties, but to estimate “worst” or “best” cases (as described in ASTM Method D6051-96-  
 3483 (2001), *Standard Guide for Composite Sampling and Field Subsampling for Environmental Waste-*  
 3484 *Management Activities*. As described later in this protocol, the aim of the consultant performing post-  
 3485 decontamination sampling is to demonstrate the worst-case scenario in the drug laboratory. The term-  
 3486 “biased,” as used here, refers to the collection of samples with expected high concentrations. For-  
 3487 example, a sample taken at the source of the actual “cook,” known release, spill or storage area could-  
 3488 serve as an estimate of the “worst-case” concentration found in the functional space. This information-  
 3489 would be useful in identifying the contaminant and estimating the maximum level of contamination likely to

be encountered during a cleanup. Biased sampling, while having the ability to cost-effectively generate information, has similar philosophical disadvantages to that of judgmental sampling.

3492

### 3493 **Establishing Hypothesis Testing**

3494 The foundation for the usefulness of any sampling protocol rests upon the establishment of appropriate data quality objectives (DQOs). Without such DQOs, sampling occurs in a vacuum and the strength of the results of the sampling may be extremely limited.

3497

3498 The DQOs are, in turn, driven by a thought process that proceeds from defining the problem, then quantifying the degree of the problem, defining what decisions are to be made based on the resulting data, and the degree of quality needed to ensure that the decision goals can be met. All sampling has error; all analysis has error. No realistic sampling and analysis protocol has a 100% guarantee of definitively characterizing any area or condition. Therefore, a realistic sampling and analysis protocol is one that minimizes error, and optimizes cost effectiveness, while increasing the probability that the DQOs will be met.

3505

3506 This sampling protocol begins with the end in mind; it is based on asking specific questions, and conducting sampling and analysis to answer those questions. In general, this protocol will rely heavily on maximizing the use of existing law enforcement, investigation, analytical and historical information (including process knowledge), thus reducing unnecessary, costly data-gathering activities, while at the same time ensuring that building occupants and the public are not placed at unnecessary risk. The protocol is not a substitute for professional judgment, but must be utilized by cognizant professionals in the application of their professional skills. Neither is the method a "cook-book" recipe that if followed, decontamination is guaranteed, and risks are assumed to be zero. The evaluation of any specific area must necessarily be based on the totality of the circumstances.

3515

3516 This protocol has been divided into two distinct sets of DQOs; one for the preliminary (pre-decontamination sampling) and one for the post-decontamination sampling. The essential difference between the two lies in the hypotheses that are being tested.

3519

### 3520 **Pre-decontamination sampling**

3521 In pre-decontamination sampling, the question that is being asked is "Is there evidence of the presence of methamphetamine production in this area?" The assumption (hypothesis) is that the area is clean i.e. "compliant," and data will be collected to find support for the hypothesis. Data (such as samples) are collected to "prove" the area is compliant. Sampling, if it is performed, is conducted in the areas potentially containing the highest possible concentrations of contaminants. Any data that disproves the hypothesis, including police records, visual clues of production, storage, or use or documentation of drug paraphernalia being present, is considered conclusive, and leads the consultant to accept the null hypothesis and declare the area non-compliant. The strength of evidence needed to reject the hypothesis is low, and is only that which would lead a reasonable person, trained in aspects of methamphetamine laboratories, to conclude the presence of methamphetamine, its precursors as related to processing, or waste products.

3532-

### 3533 **Post Decontamination sampling**

3534 In post decontamination sampling, the question that is being asked is "Does this area contain contaminants in excess of the regulatory standard?" The hypothesis is the area is non-compliant, and data is collected to test the hypothesis. In theory, the ability to prove the hypothesis necessarily becomes more difficult as the area becomes cleaner; and virtually impossible to prove in an area that is completely devoid of contamination. The lack of data supporting the hypothesis leads the consultant to accept the null hypothesis and conclude that the area is compliant. Therefore, the role of the consultant in post decontamination sampling, is not to demonstrate that the area is "clean," but rather, using bias sampling, to diligently attempt to prove, that the area is not clean. The strength of evidence needed to accept the

null hypothesis is great; and failure to support the hypothesis results in confidence that risks have been greatly reduced.

3544

#### 3545 **Decision Statement**

3546 If, based on the totality of the circumstances, the consultant finds that insufficient evidence exists to  
3547 support the hypothesis that any given area is non-compliant, that area shall be deemed to be compliant  
3548 with section 25-18.5-103 (2), C.R.S., and shall be released. If objective sampling data indicates  
3549 contamination is less than the cleanup standard, that data may be used as *prima facie* evidence that  
3550 insufficient evidence exists to support the hypothesis that any given area is non-compliant.

3551

#### 3552 **Composite Sampling**

3553 Composite sampling can be implemented as part of a statistical sampling design, such as simple random-  
3554 sampling and/or systematic sampling. The choice of a sampling design will depend upon the specific-  
3555 conditions of the drug laboratory being assessed.

3556

#### 3557 **Simple Random Composite Sampling**

3558 Figure 1 in Appendix A shows how composite sampling can be integrated into a simple random sampling-  
3559 design. In this figure, the sampled area could represent any surface or media about which a decision-  
3560 must be made (such as a series of walls, or carpeting or even contaminated soils). Randomly positioned-  
3561 field sample composites can themselves be randomly grouped together into composite samples. The set  
3562 of composite samples can then be used to estimate the mean and the variance of the results. Because-  
3563 the compositing process is a mechanical way of averaging out spatial variabilities, we assume<sup>1</sup> the-  
3564 resulting concentration data to be more normally distributed than individual samples<sup>2</sup>. This is especially-  
3565 advantageous because the assumption of the statistical tests in this protocol is that the underlying data  
3566 approximate a Gaussian distribution.

3567

3568 The sample locations can be selected by any number of methods. The "system of halves" as described in  
3569 40 CFR §761.306 is one example discussed in Appendix A and illustrated in Figures 1B and 1C in that  
3570 appendix.

#### 3571 **Systematic Composite Sampling**

3572 An example of one kind of systematic composite sampling design is shown in Appendix A, Figure 2. The  
3573 design can be used to estimate the mean concentration because each composite sample is formed from-  
3574 field samples obtained across the entire sampled unit (a wall, or a carpet, for example). Each field-  
3575 sample collected at the "A" locations is pooled and mixed into one composite sample. The process is-  
3576 then repeated for "B," "C," "D" locations and so on. The relative location and size of each individual field-  
3577 sample (such as "A") should be the same within each block.

3578

3579 A second type of systematic composite involves collecting and pooling samples from *within* a grid (See  
3580 Appendix A, Figure 3). If there is spatial correlation between the grid blocks, compositing within grids can  
3581 be used to estimate block-to-block variability or improve the estimate of the mean within a block if multiple  
3582 composite samples are collected within each block. In fact, compositing samples collected from localized-  
3583 areas is an effective means to control "short range" (small-scale) heterogeneity. When this type of  
3584 compositing is used on localized areas in lieu of "grab" sampling, it is an attractive option to improve-  
3585 representativeness of individual samples.

3586 For post decontamination, any of the above may be used, except, the consultant will purposely attempt to  
3587 "high-grade" the samples (selectively choosing sample locations that represent the highest potential  
3588 contamination, in accordance with the hypothesis being tested).

#### 3589 **Composite Decision Level**

3590 One disadvantage of composite sampling is the possibility that one or more of the individual samples-  
3591 making up the composite could be "hot" (exceed the "cleanup standard" (CL)), but remain undetected due

to “dilution” that results from the pooling process. If the sampling objective is to determine if any one or more individual samples is “hot,” composite sampling can still be used.

3594

The procedure for detecting hot spots using composite sampling is provided in Appendix A. The approach assumes the underlying distribution is normal and the composite samples were formed from equal-sized individual samples. Let CL be the “cleanup standard” that cannot be exceeded in any individual sample.

If compositing is used then the number of samples that make up the composite should be limited to avoid overall dilution below the analytical limit. It is possible for a composite sample to be diluted to a concentration below the quantitation limit if many of the individual samples have concentrations near zero and a single individual sample has a concentration just above the cleanup standard. The maximum number of identically sized individual samples ( $g$ ) that can be used to form a composite shall not exceed the cleanup (CL) divided by the quantitation limit (QL). As a practical matter, the number of individual samples used to form a composite should not exceed five discrete samples of equal area.

3605

#### Glossary of Terms

**biased:-**

the systematic or persistent distortion of a measurement process which causes errors in one direction (i.e., the expected sample measurement is different than the sample's true value).

**Data Quality Objectives (DQOs):-**

qualitative and quantitative statements derived from the DQO Process that clarify assessment objectives, define the appropriate type of data, and specify the tolerable levels of potential decision errors that will be used as the basis for establishing the quality and quantity of data needed to support decisions.

**Data Quality Objectives Process:-**

a Quality Management tool based on the Scientific Method to facilitate the planning of environmental data collection activities. The DQO Process enables planners to focus their planning efforts by specifying the intended use of the data (the decision), the decision criteria (cleanup standard) and the consultant's tolerable decision error rates. The products of the DQO Process are the DQOs.

**decision error:-**

an error made when drawing an inference from data in the context of hypothesis testing, such that variability or bias in the data mislead the consultant to draw a conclusion that is inconsistent with the true or actual state of the population under study.

**$g$ :-**

any individual sample collected for submission for analysis, either as a discrete sample or as part of a composite sample.



3628 **hypothesis:-**

3629 a tentative assumption made to draw out and test its logical or empirical consequences.—

3630 **mean:-**

3631 (i) a measure of central tendency of the population (population mean), or (ii) the arithmetic  
3632 average of a set of values (sample mean).—

3633 **measurement error:-**

3634 the difference between the true or actual state and that which is reported from measurements.—

3635 **null hypothesis:-**

3636 the default alternative conclusion that must be adopted if insufficient data exists to support the  
3637 hypothesis.—

3638 **population:-**

3639 the total collection of objects, or media to be studied and from which a sample is to be drawn.—

3640 **sampling:-**

3641 the process of obtaining representative samples and/or measurements of a subset of a  
3642 population.— Sampling is a model; inherent in sampling is error, known or unknown.—

3643 **sampling design error:-**

3644 the error due to observing only a limited number of the total possible values that make up the  
3645 population being studied.— It should be distinguished from errors due to imperfect selection; bias  
3646 in response; and errors of observation, measurement, or recording, etc.—

3647 **variance:-**

3648 a measure of (i) the variability or dispersion in a population (population variance), or (ii) the sum  
3649 of the squared deviations of the measurements about their mean divided by the degrees of  
3650 freedom (sample variance).—

3651  
3652 **X<sub>i</sub>:-**

3653 the laboratory analysis result for any discrete or composite sample submitted for analysis.—

# 3654**References**

3655

3656The following documents were consulted and used in the preparation of this protocol.

3657

3658American Society for Testing and Materials (ASTM) Method D5756-02 (November 2002), Standard Test

3659Method for Microvacuum Sampling and Indirect Analysis of Dust by Transmission Electron Microscopy for

3660Asbestos Mass Concentration,

3661

3662American Society for Testing and Materials (ASTM) Method D6044-96 (2003), Standard Guide for

3663Representative Sampling for Management of Waste and Contaminated Media.

3664

3665American Society for Testing and Materials (ASTM) Method D6051-96 (2001), Standard Guide for

3666Composite Sampling and Field Subsampling for Environmental Waste Management Activities.

3667

3668American Society for Testing and Materials (ASTM) Method D6311-98 (2003), Standard Guide for

3669Generation of Environmental Data Related to Waste Management Activities: Selection and Optimization

3670of Sampling Design.

3671

3672Field Manual for Grid Sampling of PCB Spill Sites to Verify Cleanup, EPA-560/5-86-017 (May 1986).

3673

3674Guidance for the Data Quality Objectives Process, EPA QA/G-4 EPA/600/R-96/055 (September 1994).

3675

3676RCRA Waste Sampling Draft Technical Guidance Planning, Implementation, and Assessment-

3677EPA530-D-02-002 (August 2002).

3678 Based on the central limit theorem which states that if a population is repeatedly sampled, the means of all the sampling events will tend to form a normal distribution, regardless of the shape of the underlying distribution.

<sup>2</sup> Exner JH, Keffer WD, Gilbert RO, Kinnison RR. A Sampling Strategy for Remedial Action at Hazardous Waste Sites: Clean-up Soil Contaminated by Tetrachlorodibenzo-p-Dioxin " Hazardous Waste & Hazardous Materials 2(2):503-21, 1985.

3679

**APPENDIX B**

3680

**METHAMPHETAMINE LABORATORIES**

3681

**ANALYTICAL METHODS**

3682

3683

**3684 Purpose**

3685 The purpose of this appendix is to establish standard analytical methods and procedures for use in  
 3686 identifying and quantifying contaminants resulting from the manufacture, storage or disposal of  
 3687 methamphetamine related chemicals and wastes.

3688

3689

**3690 Analytical Methods**

3691 The following analytical methods shall be used to determine the concentrations of chemicals in samples  
 3692 collected at properties used as drug labs:

- 3693 1. Analysis of wipe samples and microvacuum samples for methamphetamine shall be  
 3694 conducted using one of the laboratories listed in this appendix, or a laboratory that uses  
 3695 Forensic applications employing an Isotopic Dilution approach with the d-5, d-8, or d-14  
 3696 deuterated methamphetamine as an internal standard, and external calibration with  
 3697 authentic methamphetamine.
- 3698 2. Analysis of wipe samples and microvacuum samples for iodine shall be conducted using  
 3699 Method 9021 or Method 6020 in "Test Methods for the Evaluation of Solid Waste,  
 3700 Physical/Chemical Methods," EPA Publication SW-846.
- 3701 3. Analysis of wipe samples for lead shall be conducted using NIOSH Method 9100
- 3702 4. Analysis of vapor samples for mercury shall be conducted using NIOSH Method 6009.  
 3703 Real time monitoring by cold vapor atomic absorption or Jerome gold film technologies  
 3704 may also be used.

3705 The following analytical methods shall be used to characterize liquid wastes associated with  
 3706 methamphetamine labs:

- 3707 1. VOCs using Method 8260B in "Test Methods for the Evaluation of Solid Waste,  
 3708 Physical/Chemical Methods," EPA Publication SW-846.
- 3709 2. Ignitability/flash point by a Pensky-Martens Closed Cup Tester, using the test method  
 3710 specified in ASTM Standard D-93-79 or D-93-80 (or Method 1010 in EPA SW-846), or  
 3711 Setaflash Closed Cup Tester, using the test method specified in ASTM standard D-3278-  
 3712 78 (or Method 1020A in EPA SW-846).
- 3713 3. Corrosivity as determined by the pH electrometric measurement Method 9040B in EPA  
 3714 Publication SW-846, by corrosivity by steel using Method 1110 in EPA Publication SW-  
 3715 846.

3716 4. ~~Reactivity using Method 9014/9034 in EPA Publication SW-846.~~

3717

3718 **Analytical Laboratories**

3719

3720 The following analytical laboratories may be used to perform analysis of wipe samples or microvacuum-  
3721 samples for methamphetamine:

3722

3723 1. ~~Alliance Analytical Laboratories, LLC~~

3724 ~~401 East "s" Street~~

3725 ~~Yakima, WA 98901~~

3726

3727 2. ~~Alturas Analytics, Inc.~~

3728 ~~1282 Alturas Drive~~

3729 ~~Moscow, ID 83843~~

3730

3731 3. ~~Analytical Chemistry, Inc.~~

3732 ~~4611 South 134<sup>th</sup> Place, Suite 200~~

3733 ~~Tukwila, WA 98168~~

3734

3735 4. ~~Freedman and Bruya~~

3736 ~~3912 16<sup>th</sup> Avenue West~~

3737 ~~Seattle, WA 98119~~

3738

3739 5. ~~Legacy MetroLab~~

3740 ~~1225 Northeast 2<sup>nd</sup> Avenue~~

3741 ~~Portland, OR 97232~~

3742

3743 6. ~~Sherry Laboratories, Inc.~~

3744 ~~6825 East 38<sup>th</sup> Street~~

3745 ~~Tulsa, OK 74145~~

3746

**APPENDIX C**

3747

**METHAMPHETAMINE LABORATORIES**

3748

**VENTILATION SYSTEM DECONTAMINATION**

3749

**Purpose**

3751 The purpose of this appendix is to establish minimum requirements for the decontamination of ventilation-  
 3752 systems at buildings and structures that have been used as drug laboratories.

3753

**Decontamination Protocol**

3755 Decontamination of ventilation systems shall be conducted by a ventilation contractor experienced in the-  
 3756 decontamination of ventilation systems in structures used as drug laboratories. At a minimum, the-  
 3757 ventilation contractor shall:

3758

1. ——— Perform a walk-through of the structure prior to initiation of the project to establish a-  
 3759 specific plan for decontamination of the ventilation system.—

3760

2. ——— Follow health and safety procedures, in accordance with OSHA requirements, to protect-  
 3761 workers and others in the vicinity of the structure during the decontamination process.

3762

3. ——— Place protective coverings in areas where work is being performed, including plastic or-  
 3763 drop cloths around each area where the duct is penetrated.

3764

4. ——— Shut off and lock out all air handler units before working on each air conveyance system.

3765

5. ——— Perform a visual inspection of the interior ductwork surfaces and internal components.

3766

6. ——— Draw a negative pressure on the entire ductwork, using HEPA exhausted vacuum filters,-  
 3767 throughout the cleaning process.

3768

7. ——— Remove and clean all return air grills.

3769

8. ——— Beginning with the outside air intake and return air ducts, clean the ventilation system-  
 3770 using pneumatic or electrical agitators to agitate debris into an airborne state. Additional-  
 3771 equipment may be also be used in the cleaning process, such as brushes, air lances, air-  
 3772 nozzles, and power washers. Controlled containment practices shall be used to ensure-  
 3773 that debris is not dispersed outside the air conveyance system during cleaning.

3774

9. ——— Open and inspect air handling units, and clean all components.

3775

10. ——— Remove and clean all supply diffusers.

3776

11. ——— Clean the supply ductwork using the techniques described in item 8 above.

3777

12. ——— Reinstall diffusers and grilles after cleaning is complete.

- 3778      ~~13. Seal shut access points used for agitation purposes.~~
- 3779      ~~14. Bag and label all debris, including any filters, and properly dispose of at a landfill.~~

3780

**APPENDIX D**

3781

**METHAMPHETAMINE LABORATORIES**

3782

**INDIVIDUAL SEWAGE DISPOSAL SYSTEMS**

3783

**Purpose**

3785The purpose of this appendix is to establish a protocol for field screening, sampling, and analysis of  
 3786individual sewage disposal systems (ISDSs) to determine if wastes associated with drug laboratories has  
 3787been disposed of in the ISDS. The appendix provides further guidance regarding the proper  
 3788characterization and disposal of the contents of septic tanks that contain wastes from drug labs.

3789

**Background**

3791The most common types of drug lab wastes that might be expected in an ISDS include:

3792

1. ——— Solvents (e.g., toluene, xylene, alcohol, acetone);

3793

2. ——— Petroleum distillates (e.g., paint thinner, white gas);

3794

3. ——— Corrosives (e.g., sulphuric acid, muriatic acid, sodium hydroxide solutions); and,

3795

4. ——— Mixtures with residual ephedrine, methamphetamine, iodine or red phosphorus.

3796Field screening and sample collection shall be conducted to confirm or deny the presence of  
 3797methamphetamine waste, and to ensure proper disposal of any methamphetamine waste identified.

3798

**Field Screening**

3800Field screening of septic tanks shall be conducted if there is evidence that drug lab wastes may have  
 3801been disposed of into an ISDS. Evidence of drug lab wastes disposal into an ISDS includes, but is not  
 3802limited to, the following:

3803

1. ——— Witness statements;

3804

2. ——— Stained or etched sinks, bathtubs, toilets;

3805

3. ——— Chemical odors coming from the ISDS plumbing or tank; or

3806

4. ——— Visual observations of unusual conditions within the septic tank ("dead tank"); or,

3807

stressed or dead vegetation in a drain field.

3808 Initial field screening shall consist of the following:

- 3809 1. Monitoring the septic tank for volatile organic compounds (VOCs) using a photo-  
3810 ionization detector (PID) or a flame ionization detector (FID).
- 3811 2. Testing the pH of liquid in the septic tank using pH paper or a pH meter.

3812 Additional field screening may be conducted, at the discretion of the contractor, to further investigate the  
3813 possible presence of drug lab waste.

3814

#### 3815 **Sample Collection**

3816 If field screening indicates that the ISDS has been impacted by drug lab wastes, samples shall be  
3817 collected from the septic tank to determine if the liquids in the tank contain a hazardous waste. Samples  
3818 shall be collected according to the requirements of the analytical method being used and the following  
3819 protocol:

- 3820 1. Prior to sampling, the septic tank must have been sufficiently excavated to indicate  
3821 whether the tank consists of one or two chambers.
- 3822 2. Samples from single chamber tanks shall be collected from the baffle on the outlet end of  
3823 the tank.
- 3824 3. Samples from dual chamber tanks shall be collected from the baffle on the outlet end of  
3825 chamber one.
- 3826 4. Samples must be representative of the wastes found in the septic tank. Sampling  
3827 procedures may include the use of drum thieves, sludge judges or equivalent equipment.  
3828 The instructions for the correct usage of the sampling device shall be followed.
- 3829 5. Remove access cover from the first (or only) chamber and locate outlet baffle.
- 3830 6. Move any floating surface matter away from the insertion point of the sampling device.  
3831 Do not collect any matter in the sampling device.
- 3832 7. Insert the sampling device into the tank, lowering it until it hits the bottom.
- 3833 8. Trap the sample inside the sampling device.
- 3834 9. Remove the sampling device and fill the laboratory supplied sample containers. The  
3835 specific volume and type of sample container will be determined based on the type of  
3836 analysis desired. For VOC analysis, two 40ml vials shall be filled, leaving no headspace.
- 3837 10. Replace access cover at the completion of sample collection.
- 3838 11. Samples may be collected in laboratory preserved bottles, or in unpreserved bottles. If  
3839 the samples are collected in unpreserved bottles, the laboratory must be notified that the  
3840 samples are unpreserved.



3841 12. ~~Sample containers shall be placed in a cooler with enough ice or ice packs to maintain a~~  
 3842 ~~temperature of 4° C.~~

3843 13. ~~A Chain of Custody Record shall be maintained from the time of sample collection until~~  
 3844 ~~final disposition. Every transfer of custody shall be noted and signed for and a copy of~~  
 3845 ~~the record shall be kept by each individual who has signed it. Samples shall be sealed,~~  
 3846 ~~labeled, and secured. All samples collected shall be transported directly to the~~  
 3847 ~~laboratory. All sample documents shall be retained for the project record.~~

3848

#### 3849 **Waste Characterization**

3850 ~~The contents of septic tanks that contain waste from drug labs are solid wastes. Prior to disposal, a~~  
 3851 ~~hazardous waste determination must be made in accordance with 6 CCR 1007-3 Section 261.20 through~~  
 3852 ~~261.24. Methamphetamine wastes in septic tanks will typically not be considered to be listed hazardous~~  
 3853 ~~wastes (P, U, or F-listed) because the solvents have been used and there is too much uncertainty about~~  
 3854 ~~the types, sources and original concentrations of solvents discovered in septic tanks.~~

3855 ~~The following analysis shall be conducted to determine if an ISDS has been impacted by~~  
 3856 ~~methamphetamine labs wastes, and if the septic tank contains a characteristic hazardous waste:~~

3857 1. ~~VOCs using Method 8260B in "Test Methods for the Evaluation of Solid Waste,~~  
 3858 ~~Physical/Chemical Methods," EPA Publication SW-846.~~

3859 2. ~~Ignitability/flash point by a Pensky-Martens Closed Cup Tester, using the test method~~  
 3860 ~~specified in ASTM Standard D-93-79 or D-93-80 (or Method 1010 in EPA SW-846), or~~  
 3861 ~~Setaflash Closed Cup Tester, using the test method specified in ASTM standard D-3278-~~  
 3862 ~~78 (or Method 1020A in EPA SW-846).~~

3863 3. ~~Corrosivity as determined by the pH electrometric measurement Method 9040 in EPA~~  
 3864 ~~Publication SW-846, by corrosivity by steel using Method 1110 in EPA Publication SW-~~  
 3865 ~~846.~~

3866 4. ~~Reactivity using Method 9014/9034 in EPA Publication SW-846.~~

3867

#### 3868 **Waste Disposal**

3869 ~~Septic tank contents containing drug lab waste that have been determined to be a hazardous waste shall~~  
 3870 ~~be disposed of in accordance with the Colorado Hazardous Waste Regulations (6 CCR 1007-3). Septic~~  
 3871 ~~tank contents containing drug lab waste that have been determined not to be hazardous waste shall be~~  
 3872 ~~disposed in accordance with the Colorado Solid Waste Regulations (6 CCR 1007-2), and local~~  
 3873 ~~requirements.~~

3874

#### 3875 **RELEASE INVESTIGATION AND REMEDIATION**

3876 ~~If sampling provides evidence that hazardous waste has been disposed of in the ISDS, an investigation of~~  
 3877 ~~potential environmental contamination shall be conducted. The investigation and cleanup of soil, surface~~  
 3878 ~~water and groundwater contamination resulting from disposal of methamphetamine lab wastes into an~~  
 3879 ~~ISDS shall be conducted in accordance with either the Colorado Hazardous Waste Regulations, or the~~

~~3880 Colorado Solid Waste Regulations, as appropriate based on sampling results, and with Water Quality  
3881 Control Commission Regulations 31 and 41. Specific investigation requirements shall be determined  
3882 through consultation with the Department's Hazardous Materials and Waste Management Division.—  
3883 Guidance on soil and groundwater investigations can be found in the Department of Public Health and  
3884 Environment, Hazardous Materials and Waste Management Division (May 2002), Corrective Action  
3885 Guidance Document and the EPA Environmental Investigations Standard Operating Procedures and  
3886 Quality Assurance (EISOPQA) Manual.—~~

# 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

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Located in Glendale, Colorado

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Colorado Department  
of Public Health  
and Environment

## NOTICE OF PUBLIC RULE-MAKING HEARING BEFORE THE COLORADO BOARD OF HEALTH

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 October 15, 2014 at 10 a.m. in the Sabin-Cleere Conference Room of the Colorado Department of Public Health and Environment, Bldg. A, First Floor, 4300 Cherry Creek Drive, South, Denver, CO 80246, to consider the promulgation of amendments to 6 CCR 1014-3, Regulations Pertaining to the Cleanup of Methamphetamine Laboratories. The proposed rules have been developed by the Hazardous Materials and Waste Management Division of the Colorado Department of Public Health and Environment pursuant to Section 25-18.5-102, C.R.S.

The agenda for the meeting and the proposed amendments will also be available on the Board's website, <http://www.colorado.gov/cs/Satellite?c=Page&childpagename=CDPHE-Main%2FCBONLayout&cid=1251622332257&pagename=CBONWrapper>, at least 7 days prior to the meeting. The proposed rules, together with the proposed statement of basis and purpose, specific statutory authority and regulatory analysis will be available for inspection at the Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South EDO-A5, Denver, Colorado 80246-1530 at least five working days prior to the hearing. Copies of the proposed rules may be obtained by contacting the Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division HMWMD-B2, 4300 Cherry Creek Drive S., Denver, CO 80246, (303) 692-3357.

The Board encourages all interested persons to participate in the hearing by providing written data, views, or comments, or by making oral comments at the hearing. At the discretion of the Chair, oral testimony at the hearing may be limited to three minutes or less depending on the number of persons wishing to comment. Pursuant to 6 CCR 1014-8, §3.02.1, written testimony must be submitted no later than five (5) calendar days prior to the rulemaking hearing. Persons wishing to submit written comments should submit them to: Colorado Board of Health, ATTN: Jamie L. Thornton, Program Assistant, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South EDO-A5, Denver, Colorado 80246-1530 or by e-mail at: [Jamie.thornton@state.co.us](mailto:Jamie.thornton@state.co.us)

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Deborah Nelson  
Board of Health Administrator

185

3926



## COLORADO

### Board of Health

Department of Public Health & Environment

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The agenda for the meeting and the proposed amendments will also be available on the Board's website, <https://www.colorado.gov/pacific/cdphe/boh>, at least 7 days prior to the meeting. The proposed rules, together with the proposed statement of basis and purpose, specific statutory authority and regulatory analysis will be available for inspection at the Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South EDO-A5, Denver, Colorado 80246-1530 at least five working days prior to the hearing. Copies of the proposed rules may be obtained by contacting the Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division HMWMD-B2, 4300 Cherry Creek Drive S., Denver, CO 80246, (303) 692-3357.

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Dated this 27<sup>th</sup> day of August, 2014.

Deborah Nelson  
Board of Health Administrator

# Notice of Rulemaking Hearing

**Tracking number**

2014-00913

**Department**

1000 - Department of Public Health and Environment

**Agency**

1011 - Health Facilities and Emergency Medical Services Division (1011, 1015 Series) - by Colo Bd of Health

**CCR number**

6 CCR 1015-3

**Rule title**

EMERGENCY MEDICAL SERVICES

## Rulemaking Hearing

**Date**

10/15/2014

**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**

Chapter Five regarding air ambulance licensure fees,

**Statutory authority**

Section 25-3.5-307, C.R.S.

## Contact information

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**COLORADO**  
Department of Public  
Health & Environment

Dedicated to protecting and improving the health and environment of the people  
of Colorado

To: Members of the State Board of Health

From: Marschall Smith, Professional Standards Section Manager

Through: D. Randy Kuykendall, Director Health Facilities and EMS Division - D.R.K  
Michelle Reese, Deputy Director Health Facilities and EMS Division

Date: August 20, 2014

Subject: **Request for Rulemaking Hearing**

Proposed Amendments to 6 CCR 1015-3, Chapter Five, Rules Pertaining  
to Air Ambulance Licensing with a request for the rulemaking hearing to  
occur in October of 2014.

The department is proposing an amendment to 6 CCR 1015-3, Chapter Five, Section 6.  
The proposed amendment will waive application fees for all initial and renewal air  
ambulance licenses from January 1, 2015 through July 1, 2017. This temporary waiver  
of fees is necessary to bring the fixed-wing and rotary-wing ambulances cash fund,  
authorized by Section 25-3.5-307, C.R.S., into compliance with Section 24-75-402,  
C.R.S., by lowering the excess reserved moneys in that fund to an amount at or below  
16.5% of yearly expenditures.

In February 2014, the Office of the State Auditor submitted its audit to the Legislative  
Audit Committee, entitled *Cash Funds Uncommitted Reserve Report Fiscal Year Ended  
June 20, 2013*. This report found that the fixed-wing and rotary-wing ambulances fund  
had an excess reserve of \$49,684. The amendment to Chapter Five, Section 6 will bring  
the fixed-wing and rotary-wing ambulances fund into compliance with Section 24-75-  
402, C.R.S and the department will still be able to maintain services.



STATEMENT OF BASIS AND PURPOSE  
AND SPECIFIC STATUTORY AUTHORITY

for Amendments to  
6 CCR 1015-3, Chapter Five, Rules Pertaining to Air Ambulance Licensing

**Basis and Purpose.**

The proposed amendments to 6 CCR 1015-3, Chapter Five Section 6 will temporarily waive all fees for fixed-wing and rotary-wing ambulances that operate in Colorado. This change is required to bring the fixed-wing and rotary-wing ambulances fund into compliance with Section 24-75-402, C.R.S. by lowering the excess uncommitted reserves to an amount at or below 16.5% of yearly expenditures. The department will still have the funds to support the licensure of fixed-wing and rotary-wing ambulance operators, as well as any enforcement work that may need to take place.

**Specific Statutory Authority.**

These rules are promulgated pursuant to the following statutes:  
Section 25-3.5-307, C.R.S.

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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



78                  X   No

79 **Does this rule create or modify fines or fees?**

80                  X   Yes

81                \_\_\_\_\_ No

## REGULATORY ANALYSIS

for Amendments to  
6 CCR 1015-3, Chapter Five, Rules Pertaining to Air Ambulance Licensing

**871. A description of the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.**

The proposed amendments will affect all air ambulance agencies that operate within Colorado. Currently, there are twenty agencies and a total of sixty-six aircraft. During the period from January 1, 2015 through July 1, 2017, these agencies, and any additional agencies that seek to operate in Colorado, will pay no licensing fees. Licenses are issued by the department for one year.

**982. 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.**

Air ambulance licenses are valid for one year from issuance. During the period of January 1, 2015 to July 1, 2017 the department anticipates forty renewal licenses to be issued. Due to the statutory requirements for licensure of air ambulances, the department does not anticipate an increase of licensees or applicants.

**1083. 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 department does not anticipate any additional costs will be incurred by it or any other agency.

**1164. A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.**

This amendment is necessary to bring the fixed-wing and rotary-wing ambulances fund into compliance with Section 24-75-402, C.R.S.

**1235. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.**

The determination is that there is no less costly or less intrusive method for achieving the purpose of the rule.

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131**6. Alternative Rules or Alternatives to Rulemaking Considered and Why**  
132**Rejected.**

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134The waiving of fees from January 1, 2015 through July 1, 2017 is the fastest way to  
135bring the fixed-wing and rotary-wing ambulances fund into compliance with Section 24-  
13675-402, C.R.S.

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138**7. To the extent practicable, a quantification of the data used in the analysis;**  
139**the analysis must take into account both short-term and long-term**  
140**consequences.**

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142In determining how to quickly come into compliance with Section 24-75-402, C.R.S. the  
143department found that waiving fees for a defined period of time would be most effective.  
144From January 1, 2015 through July 1, 2017, the department will forego approximately  
145\$47,600 in licensure fees. After July 1, 2017, fees will revert to what is stated in the fee  
146schedule already in Section 6.1. In order to ensure continued compliance with Section  
14724-75-402, C.R.S., the department will continue to evaluate what fee is necessary to  
148cover direct and indirect costs associated with issuing air ambulance licenses.

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STAKEHOLDER Comment  
for Amendments to

**6 CCR 1015-3, Chapter Five, Rules Pertaining to Air Ambulance Licensing**

The following individuals and/or entities were included in the development of these proposed rules:

The Department determined that the temporary waiver of fees was the quickest way to come into compliance with Section 24-75-402, C.R.S.

The following individuals and/or entities were notified that this rule-making was proposed for consideration by the Board of Health:

The State Emergency Medical and Trauma Services Advisory Council (SEMTAC) was notified of the proposal on July 10, 2014.

The Department will be notifying all currently certified air ambulance agencies of the proposed change prior to the August 20, 2014 Board of Health meeting.

On or before the date of publication of the notice in the Colorado Register, the Division  
sent notice to persons and/or groups considered by the division to be interested parties  
to the proposed rule-making, and those who have requested notification/ information  
from the division regarding the proposed rule-making? \_\_\_\_ Yes \_\_\_\_ No. The  
Division provided notice on **N/A**.

Summarize Major Factual and Policy Issues Encountered and the Stakeholder  
Feedback Received. If there is a lack of consensus regarding the proposed rule, please  
also identify the Department's efforts to address stakeholder feedback or why the  
Department was unable to accommodate the request.

The Department expects this proposed rule to be supported by the stakeholders.

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 rule change is a fee waiver and will have no impact on health equity and  
environmental justice.



**221DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT****222Health Facilities and Emergency Medical Services Division****223Chapter Five – Rules Pertaining to Air Ambulance Licensing****2246 CCR 1015-3 Chap 5**

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**228Section 6 - Fees**

2296.1 All applicants seeking air ambulance licensure by the department under these rules shall submit  
230 the following non-refundable fees with each initial or renewal licensure application:

231 6.1.1 \$860 for each air ambulance service, plus \$100 for each aircraft used by the air  
232 ambulance service.

233 6.1.2 For applicants who are not CAMTS accredited, the applicant shall pay a fee of \$525 to  
234 the department in addition to the fee set forth in Subsection 6.1.1 above.

2356.2 From January 1, 2015 until July 1, 2017, the fees set forth in Subsection 6.1 are waived.

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## COLORADO

### Board of Health

Department of Public Health & Environment

#### NOTICE OF PUBLIC RULE-MAKING HEARING BEFORE THE COLORADO BOARD OF HEALTH

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 October 15, 2014 at 10 a.m. in the Sabin-Cleere Conference Room of the Colorado Department of Public Health and Environment, Bldg. A, First Floor, 4300 Cherry Creek Drive, South, Denver, CO 80246, to consider the promulgation 6 CCR 1015-3, Chapter Five regarding air ambulance licensure fees. The proposed rules have been developed by the Health Facilities and Emergency Medical Services Division of the Colorado Department of Public Health and Environment pursuant to Section 25-3.5-307, C.R.S.

The agenda for the meeting and the proposed amendments will also be available on the Board's website, [www.colorado.gov/pacific/cdphe/boh](http://www.colorado.gov/pacific/cdphe/boh), at least 7 days prior to the meeting. The proposed rules, together with the proposed statement of basis and purpose, specific statutory authority and regulatory analysis will be available for inspection at the Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South EDO-A5, Denver, Colorado 80246-1530 at least five working days prior to the hearing. Copies of the proposed rules may be obtained by contacting the Colorado Department of Public Health and Environment, Health Facilities and Emergency Medical Services Division EMS 8300, ATTN: Alexandra Haas, 4300 Cherry Creek Drive S., Denver, CO 80246, (303) 692-6339.

The Board encourages all interested persons to participate in the hearing by providing written data, views, or comments, or by making oral comments at the hearing. At the discretion of the Chair, oral testimony at the hearing may be limited to three minutes or less depending on the number of persons wishing to comment. Pursuant to 6 CCR 1014-8, §3.02.1, written testimony must be submitted no later than five (5) calendar days prior to the rulemaking hearing. Persons wishing to submit written comments should submit them to: Colorado Board of Health, ATTN: Jamie L. Thornton, Program Assistant, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South EDO-A5, Denver, Colorado 80246-1530 or by e-mail at: [Jamie.thornton@state.co.us](mailto:Jamie.thornton@state.co.us)

Dated this 27<sup>th</sup> day of August, 2014.

A handwritten signature in cursive script, appearing to read "Deborah Nelson".

Deborah Nelson  
Board of Health Administrator



# Notice of Rulemaking Hearing

**Tracking number**

2014-00927

**Department**

1100 - Department of Labor and Employment

**Agency**

1101 - Division of Workers' Compensation

**CCR number**

7 CCR 1101-3

**Rule title**

WORKERS' COMPENSATION RULES OF PROCEDURE WITH TREATMENT  
GUIDELINES

**Rulemaking Hearing****Date**

10/15/2014

**Time**

09:00 AM

**Location**

633 17th Street Suite 1200, Denver, CO 80202

**Subjects and issues involved**

Rule 5 Claims Adjusting

**Statutory authority**

8-47-107

**Contact information****Name**

David Gallivan

**Title**

Regulatory Analyst

**Telephone**

303-318-8723

**Email**

david.gallivan@state.co.us

# DEPARTMENT OF LABOR AND EMPLOYMENT

## Division of Workers' Compensation

7 CCR 1101-3

### WORKERS' COMPENSATION RULES OF PROCEDURE

#### Rule 5 Claims Adjusting Requirements

##### 5-1 COMPLETION OF DIVISION FORMS

- (A) Information required on Division forms shall be typed or legibly written in black or blue ink, completed in full and in accordance with Division requirements as to form and content. Forms that do not comply with this rule may not be accepted for filing. Position statements relative to liability which do not meet Division requirements will be returned to the insurer.
- (B) Insurers may transmit data in an electronic format **ONLY** as directed by the Division.
- (C) ~~Effective July 1, 2006, all~~ **ALL** first reports of injury and notices of contest ~~that are required to be filed with the Division shall be transmitted electronically. Transmitted electronically includes either~~ **VIA** electronic data interchange (EDI), or via the Division's internet filing process. First Reports of Injury and Notices of Contest cannot be submitted via electronic mail.
- (D) The Director may grant an exemption to an insurer from filing electronically because of a small number of filings or financial hardship. Any insurer requesting an exemption from electronic filing may do so in letter form addressed to the Director. The request should provide specific justification(s) for the requested exemption. The letter should address whether an exemption is sought for only EDI or also for internet filing.
- (E) **IN THE EVENT COMPLIANCE WITH 5-1(C) IS PREVENTED BY TECHNOLOGICAL ERRORS BEYOND THE CONTROL OF THE FILING PARTY, A WAIVER MAY BE REQUESTED BY SUBMITTING THE PAPER FORM ALONG WITH A COVER LETTER ADDRESSED TO THE DIRECTOR IDENTIFYING THE REASON FOR THE REQUEST. UPON RECEIPT OF A REQUEST THE DIVISION WILL EITHER ACCEPT THE PAPER FORM OR NOTIFY THE FILING PARTY THAT ELECTRONIC SUBMISSION WILL BE REQUIRED.**

##### 5-2 FILING OF EMPLOYERS' FIRST REPORTS OF INJURY

- (A) Within ten days of notice or knowledge an employer shall report any work-related injury, illness or exposure to an injurious substance as described in subsection (F), to the employer's insurer. An employer who does not provide the required notice may be subject to penalties or other sanctions.
- (B) A First Report of Injury shall be filed with the Division in a timely manner whenever any of the following apply. The insurer or third-party administrator may file the First Report of Injury on behalf of the employer.
  - (1) ~~In the event of~~ **IF** an injury that results in a fatality, or an accident in which three or more employees are injured **IN THE SAME ACCIDENT, IN ADDITION TO FILING A FIRST REPORT,** the Division **CUSTOMER SERVICE UNIT** shall be notified ~~immediately~~ **VIA TELEPHONE WITHIN TWENTY FOUR (24) HOURS OF NOTICE OF SUCH AN OCCURRENCE.**

- (2) Within ten days after notice or knowledge by an employer that an employee has contracted an occupational disease listed below, or the occurrence of a permanently physically impairing injury, or that an injury or occupational disease has resulted in lost time from work for the injured employee in excess of three shifts or calendar days. An occupational disease that falls into any of the following categories requires the filing of a First Report of Injury:
    - (a) Chronic respiratory disease;
    - (b) Cancer;
    - (c) Pneumoconiosis, including but not limited to Coal worker's lung, Asbestosis, Silicosis, and Berylliosis;
    - (d) Nervous system diseases;
    - (e) Blood borne infectious, contagious diseases.
  - (3) Within ten days after notice or knowledge of a **ANY** claim for benefits, including medical benefits only, that is denied for any reason.
- (C) The insurer shall state whether liability is admitted or contested within 20 days after the date the employer's First Report of Injury is filed with the Division. If an Employer's First Report of Injury should have been filed with the Division, but wasn't, the insurer's statement concerning liability is considered to be due within 20 days from the date the Employer's First Report of Injury should have been filed. The date a First Report of Injury should have been filed with the Division is the last day it could have been timely filed in compliance with paragraph (B) above.
- (D) The insurer shall state whether liability is admitted or contested within 20 days after the date the Division mails to the insurer a Worker's Claim for Compensation or Dependent's Notice and Claim for Compensation.
- (E) ~~No statement regarding liability is required unless~~ **A STATEMENT REGARDING LIABILITY IS REQUIRED FOR ANY CLAIM IN WHICH a DIVISION ISSUED** Workers' Compensation claim number is assigned or a First Report of Injury should have been filed pursuant to paragraph (B) of this rule. ~~The Division cannot accept a~~ **A** statement regarding liability **SHALL NOT BE FILED** without a First Report of Injury, Worker's Claim for Compensation, or Dependents Notice and claim having been successfully filed and assigned a **WORKERS' COMPENSATION** claim number.
- (F) In the format required by the Director, each insurer shall submit a monthly summary report to the Division containing the following:
- (1) Injuries to employees that result in no more than three days' or three shifts' loss of time from work, no permanent physical impairment, no fatality, or contraction of an occupational disease not listed in subsection (B) of the rule; and
  - (2) Exposures by employees to injurious substances, energy levels, or atmospheric conditions when the employer requires the use of methods or equipment designed to prevent such exposures and where such methods or equipment failed, was not properly used, or was not used at all.

At the time an insurer notifies the Division of its position on a claim, the insurer shall notify the claimant in writing of the insurer's claim number, the name and address of the individual assigned to the adjustment of the claim, and the toll-free telephone number of the adjuster.

#### 5-4 MEDICAL REPORTS AND RECORDS

- (A) Medical reports on claims that have been reported to the Division shall be filed with the Division under the following circumstances:
- (1) When attached to an admission of liability form, or a petition to suspend benefits, or
  - (2) In connection with a request to the Division to determine the claimant's eligibility for vocational rehabilitation benefits or to review a vocational rehabilitation plan, or to review requests regarding the provision of vocational rehabilitation services, or
  - (3) When otherwise required by any other rule or the Act, or
  - (4) At the request of the director.
  - (5) A copy of every medical report not filed with the Division shall be exchanged with all parties within fifteen (15) ~~working~~ **BUSINESS** days of receipt.
- (B) For claims which are not required to be reported to the Division, the parties shall exchange medical information ~~immediately upon~~ **REPORTS WITHIN FIVE (5) BUSINESS DAYS OF A** request for such information by ~~any interested A party TO THE CLAIM. Five (5) working days is considered to be a reasonable time within which to exchange information.~~
- (C) A party shall have 15 days from the date of mailing to complete, sign, and return a release of medical and/or other relevant information. If a written request for names and addresses of health care providers accompanies the medical release(s), a claimant shall also provide a list of names and addresses of health care providers reasonably necessary to evaluate/adjust the claim along with the completed and signed release(s). Medical information from health care providers who have treated the part(s) of the body or condition(s) alleged by the claimant to be related to the claim, during the period five years before the date of injury and thereafter through the date of the request, will ~~generally be considered~~ **PRESUMED** reasonable. **ANY REQUEST FOR INFORMATION IN EXCESS OF THE PRESUMPTION CONTAINED IN THIS RULE SHALL INCLUDE A NOTICE THAT THE INSURER IS REQUESTING INFORMATION IN EXCESS OF WHAT IS PRESUMED REASONABLE AND THAT PROVIDING THE INFORMATION IS NOT REQUIRED.** If a party disputes that ~~such A~~ request **WITHIN THE PRESUMPTION** is reasonable or that information sought is reasonably necessary, that party may file a motion with the Office of Administrative Courts or schedule a prehearing conference. The request for ~~and~~ release of medical information as well as informal disclosures necessary to evaluate/adjust the claim are not considered discovery.
- (D) A party shall have 15 days from the date of mailing to respond to a reasonable request for information regarding wages paid at the time of injury and for a reasonable time prior to the date of injury, and other relevant information necessary to determine the average weekly wage. Any dispute regarding such a request may be resolved by the Director or an Administrative Law Judge. The request for and exchange of information under this Rule 5-4(D) is not considered discovery.

5-5 ADMISSIONS OF LIABILITY

- (A) When the final admission is predicated upon medical reports, such reports shall accompany the admission along with the worksheets or other evaluation information associated with an impairment rating. ~~The admission shall specify and describe the insurer's position on the provision of medical benefits after MMI, as may be reasonable and necessary within the meaning of the Act. The admission shall make specific reference to the medical report by listing the physician's name and the date of the report~~
- (1) **THE ADMISSION SHALL SPECIFY AND DESCRIBE THE INSURER'S POSITION ON THE PROVISION OF MEDICAL BENEFITS AFTER MMI, AS MAY BE REASONABLE AND NECESSARY WITHIN THE MEANING OF THE ACT. THE ADMISSION SHALL MAKE SPECIFIC REFERENCE TO THE MEDICAL REPORT BY LISTING THE PHYSICIAN'S NAME AND THE DATE OF THE REPORT IN THE REMARKS SECTION OF THE ADMISSION.**
- ~~(1)~~ (2) The objection form prescribed by the Division as part of the final admission form shall precede any attachment.
- (B) An admission filed for medical benefits only, ~~shall include remarks outlining~~ **STATE** the basis for denial of temporary and permanent disability benefits **WITHIN THE ADMISSION.**
- (C) **UPON TERMINATION OR REDUCTION IN THE AMOUNT OF COMPENSATION, A NEW ADMISSION SHALL BE FILED WITH SUPPORTING DOCUMENTATION PRIOR TO THE NEXT SCHEDULED DATE OF PAYMENT, REGARDLESS OF THE REASON FOR THE TERMINATION OR REDUCTION.** ~~Admissions shall be filed with supporting attachments immediately upon termination or reduction in the amount of compensation benefit~~ An admission shall be filed within 30 days of resumption or increase of benefits.
- (1) **FOLLOWING ANY ORDER (EXCEPT FOR ORDERS WHICH ONLY INVOLVE DISFIGUREMENT) BECOMING FINAL WHICH ALTERS BENEFITS BEING PAID UNDER THE WORKERS COMPENSATION ACT, AN ADMISSION CONSISTENT WITH THE ORDER SHALL BE TIMELY FILED.**
- (2) **THE FILING OF AN ADMISSION CONSISTENT WITH THIS SECTION SHALL NOT BE CONSTRUED AS A REOPENING OF ANY ISSUES CLOSED BY A PRIOR ADMISSION OR RESOLVED BY ORDER.**
- (D) For all injuries required to be filed with the Division with dates of injury on or after July 1, 1991:
- (1) Where the claimant is a state resident at the time of MMI:
- (a) When an authorized treating physician providing primary care is not Level II accredited and has determined the claimant has reached MMI and has sustained any permanent impairment, such physician shall, within 20 days after the determination of MMI, refer the claimant to a Level II accredited physician for a medical impairment rating. If the referral is not timely made, the insurer shall refer the claimant to a Level II accredited physician for a medical impairment rating within 40 days after the determination of MMI.

- (b) If the authorized treating physician determining MMI is Level II accredited, within 20 days after the determination of MMI, such physician shall determine the claimant's permanent impairment, if any.
- (2) Where the claimant is not a state resident at the time of MMI:
  - (a) When an authorized treating physician providing primary care is not Level II accredited and has determined the claimant has reached MMI and has sustained any permanent impairment, within 20 days after the determination of MMI, such physician shall conduct tests to evaluate impairment and shall transmit to the insurer all test results and relevant medical information. Within 20 days of receipt of the medical information, the insurer shall appoint a Level II accredited physician to determine the claimant's medical impairment rating from the information that was transmitted.
  - (b) When the claimant chooses not to have the treating physician providing primary care conduct tests to evaluate impairment, or if the information is not transmitted in a timely manner, the insurer shall arrange and pay for the claimant to return to Colorado for examination, testing, and rating, at the expense of the insurer. The insurer shall provide to the claimant at least 20 days advance written notice of the date and time of the impairment rating examination, and a warning that refusal to return for examination may result in the loss of benefits. Such notification shall also include information identifying travel and accommodation arrangements.
- (E) For those injuries required to be filed with the Division with dates of injury on or after July 1, 1991, and subject to ~~§ 8-42-107(8), C.R.S.~~, medical impairment:
  - (1) Within 30 days after the date of mailing or delivery of a determination of medical impairment by an authorized Level II accredited physician, or within 30 days after the date of mailing or delivery of a determination by the authorized treating physician providing primary care that there is no impairment, the insurer shall either:
    - (1a) File an admission of liability consistent with the physician's opinion, or-
    - (2b) Request a Division Independent Medical Examination (IME) ~~on the issue of medical impairment~~ in accordance with Rule 11-3 **AND §8-42-107.2, C.R.S.,**
    - (c) **IN CASES INVOLVING ONLY A SCHEDULED IMPAIRMENT, AN APPLICATION FOR HEARING MAY BE FILED WITHOUT A DIVISION INDEPENDENT MEDICAL EXAMINATION.**
      - (i) **THE FILING OF AN APPLICATION FOR HEARING BY THE INSURER UNDER THIS PROVISION SHALL NOT PREVENT THE CLAIMANT FROM SEEKING A DIVISION INDEPENDENT MEDICAL EXAM ON THE ISSUES OF MMI AND/OR WHOLE PERSON IMPAIRMENT. THE TIME TO REQUEST AN INDEPENDENT MEDICAL EXAM SHALL COMMENCE WITH THE FILING OF THE APPLICATION FOR HEARING.**
      - (ii) **ANY APPLICATION FOR HEARING FILED UNDER THIS PROVISION SHALL INCLUDE A NOTIFICATION TO THE CLAIMANT**

**THAT THEY MAY REQUEST A DIME, AS WELL AS A COPY OF THE  
DIVISION'S NOTICE AND PROPOSAL FORM**

- (F) Within 20 days after the date of mailing of the division's notice of receipt of the division independent medical examiner's report the insurer shall either admit liability consistent with such report or file an application for hearing. This section does not pertain to IMEs rendered under § 8-43-502, C.R.S.
- (G) The insurer may modify an existing admission regarding medical impairment, whenever the medical impairment rating is changed pursuant to a ~~binding IME~~ **DIVISION INDEPENDENT MEDICAL EXAM**, an **IME A DIVISION INDEPENDENT MEDICAL EXAM** selected in accordance with RULE 5-5(E); or an order. Any such modifications shall not affect an earlier award or admission as to monies previously paid.—
- ~~(H) For those injuries required to be filed with the Division with dates of injury on or after July 1, 1991, and subject to § 8-42-107(2), C.R.S., scheduled injuries:~~
- ~~(1) The time requirements as set forth in Rule 5-5(D) apply.~~
- ~~(2) Within 30 days after a determination of permanent **SCHEDULED** impairment from an authorized Level II accredited physician is mailed or delivered, or a determination by the authorized treating physician providing primary care that there is no impairment is mailed or delivered, the insurer shall either:~~
- ~~(a) File an admission of liability consistent with the physician's opinion, or~~
- ~~(b) Set the matter for hearing at the Office of Administrative Courts.~~
- ~~(+H) When an insurer files an admission admitting for a medical impairment, the insurer shall admit for the impairment rating in a whole number. If the impairment rating is reported with a decimal percentage, the insurer shall round up to the nearest whole number.~~
- ~~(J) This section (J) applies to claims with a date of injury on or after July 1, 2008. A carrier may not reduce a claimant's temporary total disability, temporary partial disability or medical benefits because of a prior injury, whether work-related or non-work-related.~~
- ~~— If a permanent impairment rating is reduced on an admission pursuant to section 8-42-104(5)(a), a copy of the previous award or settlement shall be attached to the admission and must establish that the award or settlement was for the same body part. If a permanent impairment rating is reduced on an admission pursuant to section 8-42-104(5)(b), documentation shall be attached to the admission establishing prior impairment to the same body part that was identified, treated and independently disabling at the time of the work-related injury.~~

**5-6 TIMELY PAYMENT OF COMPENSATION BENEFITS**

- (A) Benefits awarded by order are due on the date of the order. After all appeals have been exhausted or in cases where there have been no appeals, insurers shall pay benefits within thirty days of when the benefits are due. ~~Any ongoing benefits shall be paid consistent with statute and rule.~~
- (B) Temporary disability benefits awarded by admission are due on the date of the admission and the initial payment shall be paid so that the claimant receives the benefits not later than **FIVE (5)** calendar days after the date of the admission. Temporary total disability benefits are payable at least once every two weeks thereafter **FROM THE DATE OF**

**THE ADMISSION.** In some instances an Employer's First Report of Injury and admission can be timely filed, but the first installment of compensation benefits will be paid more than 20 days after the insurer has notice or knowledge of the injury. So long as the filings are timely and benefits timely paid and for the entire period owed as of the date of the admission, the insurer will be considered in compliance.

- (C) Permanent ~~disability~~ **IMPAIRMENT** benefits awarded by admission are retroactive to the date of maximum medical improvement and shall be paid so that the claimant receives the benefits not later than **FIVE (5)** calendar days after the date of the admission. Subsequent permanent disability benefits shall be paid at least once every two weeks. **WHEN BENEFITS ARE CONTINUING, THE PAYMENT SHALL INCLUDE ALL BENEFITS WHICH ARE DUE AS OF THE DATE PAYMENT IS ACTUALLY ISSUED.**
- (D) An insurer shall receive credit against permanent disability benefits for any temporary disability benefits paid beyond the date of maximum medical improvement.
- (E) **BENEFITS SHALL BE CALCULATED BASED ON A SEVEN (7) DAY CALENDAR WEEK.**

#### 5-7 PERMANENT PARTIAL DISABILITY BENEFIT RATES

- (A) Permanent partial disability benefits paid as compensation for a non-scheduled injury or illness which occurred on or after July 1, 1991, shall be paid at the temporary total disability rate, but not less than one hundred fifty dollars per week and not more than fifty percent of the state average weekly wage at the time of the injury.
- (B) Scheduled impairment benefits shall be paid at the calculated rate pursuant to [§ 8-42-107 \(6\) C.R.S.](#)
- (C) Where scheduled and non-scheduled injuries occurred resulting in impairment, the impairment benefits and the scheduled impairment benefit shall be paid concurrently.

#### 5-8 ADMISSION FOR PERMANENT TOTAL DISABILITY BENEFITS

- (A) An insurer shall file an admission of liability for permanent total disability benefits on a final admission of liability form prescribed by the Division.
- (B) An insurer may terminate permanent total disability benefits without a hearing by filing an admission of liability form with all of the following attachments:
  - (1) A death certificate or written notice advising of the death of a claimant;
  - (2) A receipt or other proof substantiating payment of compensation to the claimant through the date of death; and
  - (3) A statement by the insurer as to its liability for payment of:
    - (a) Death benefits and
    - (b) If there are dependents, the unpaid portion of permanent total disability benefits the claimant would have received had s/he lived until receiving compensation at the regular rate for a period of six years.

#### 5-9 REVISING **FINAL** ADMISSIONS



- (A) Within the time limits for objecting to the final admission of liability pursuant to [§ 8-43-203, C.R.S.](#), the Director may allow an insurer to amend the admission for permanency, by notifying the parties that an error exists due to a miscalculation, omission, OR clerical error.
- (B) The period for objecting to a final admission begins on the mailing date of the last final admission.
- (C) ~~This subsection applies to claimants with an open claim~~ **FOR ALL OPEN CLAIMS** with dates of injury on or after July 1, 1991 and before August 5, 1998 with the most recent and valid Final Admission of Liability filed before September 1, 1999 to which a timely objection was filed by the claimant but no Division independent medical examination was held before September 1, 1999. The carrier, self-insured employer, or non-insured employer may file an amended Final Admission of Liability providing notice to the claimant of the requirement to mail a notice and proposal to select an independent medical examiner per [§ 8-42- 107.2 C.R.S.](#) Failure to provide such notice by amended Final Admission of Liability as indicated in this subsection shall preclude the carrier, self-insured employer or non-insured employer from asserting that the claimant failed to timely file a notice and proposal to select an independent medical examiner per [§ 8-42- 107.2 C.R.S.](#) If the notice is provided by amended Final Admission of Liability the carrier, self-insured employer or non-insured employer is not precluded from subsequently raising any relevant equitable argument, such as waiver, laches or estoppel, regarding whether the notice and proposal was timely filed.

#### 5-10 LUMP SUM PAYMENT OF AN AWARD

- (A) For lump sum requests less than or equal to \$10,000.00 for permanent partial disability awards for whole person or scheduled impairment, and where the injury or illness occurred on or after July 1, 1991, the following applies per [§ 8-42-107.2 C.R.S.](#):
  - (1) Lump sum payment of \$10,000.00, or the remainder of the award, if less, shall automatically be paid, less discount, on the claimant's written request to the insurer. The insurer shall calculate the sum certain and issue payment taking applicable offsets (i.e., disability benefits, incarceration, garnishments) within ten (10) business days from the date of mailing of the request by the claimant.
- (B) For lump sum requests greater than \$10,000.00 for permanent partial awards, or for any permanent total, or dependents' benefits, the following applies per [§ 8-43-406 C.R.S.](#):
  - (1) If the claimant is represented by counsel, a request for a lump sum payment of a portion or remaining benefits shall be made by submitting a Request for Lump Sum Payment form to the insurer and the Division, if the claimant has indicated that the admission will be accepted as filed, relative to permanent partial disability and maximum medical improvement. The claimant is not required to waive the right to pursue permanent total disability benefits as a condition to receiving the lump sum. Within ten (10) business days of the date the Request for Lump Sum Payment form was mailed, the insurer shall issue the payment and file the required benefit payment information with the Division, the claimant and the claimant's attorney.
    - (a) The insurer shall have ten (10) business days from the claimant's request to object to the payment of the lump sum. Prior to payment and within the same ten (10) day time period, the insurer shall submit the lump sum calculations to claimant, claimant's attorney and the Division providing the reason for the objection. Upon receipt of the form the Director shall make a determination on the lump sum request.

- (b) The claimant shall have ten (10) business days from the date the payment or payment information was mailed to object to the accuracy of the payment by stating the basis for the objection, in writing, to the Division and insurer. Following receipt of the objection, the Director shall make a determination on the lump sum payment.
  - (c) ~~The total of all lump sums may not exceed \$60,000 per claim.~~ **THE TOTAL OF ALL LUMP SUMS ISSUED PER CLAIM MAY NOT EXCEED THE AMOUNT SET FORTH IN THE DIRECTOR'S ANNUAL MAXIMUM BENEFIT ORDER IN EFFECT ON THE DATE THE LUMP SUM IS REQUESTED.**
- (2) If the claimant is not represented by counsel, a request for a lump sum payment of benefits shall be made by submitting a Request for Lump Sum Payment to the insurer and the Division if the claimant has indicated that the admission will be accepted as filed, relative to permanent partial disability and maximum medical improvement. The claimant is not required to waive the right to pursue permanent total disability benefits as a condition to receiving the lump sum. Within ten (10) business days of the date the Request for Lump Sum Payment form was mailed, the insurer shall file the required lump sum calculation information with the Division and the claimant.
  - (a) The claimant shall have ten (10) business days from the date of mailing of the benefit payment information provided by the insurer to object to the accuracy of this information. In the absence of an objection, a lump sum order issued by the Director will be based upon the information submitted.
  - (b) ~~The total of all lump sums may not exceed \$60,000 per claim.~~ **THE TOTAL OF ALL LUMP SUMS ISSUED PER CLAIM MAY NOT EXCEED THE AMOUNT SET FORTH IN THE DIRECTOR'S ANNUAL MAXIMUM BENEFIT ORDER IN EFFECT ON THE DATE THE LUMP SUM IS REQUESTED.**
- (C) The insurer shall issue payment within ten (10) business days of the date of mailing of the order by the Director.

#### 5-11 ~~COMPUTATION OF BENEFITS~~ **APPORTIONMENT**

~~The workers' compensation benefit amount is based upon a seven day calendar week.~~

- (1) **FOR ALL CLAIMS WITH A DATE OF INJURY ON OR AFTER JULY 1, 2008, A CARRIER MAY NOT REDUCE A CLAIMANT'S TEMPORARY TOTAL DISABILITY, TEMPORARY PARTIAL DISABILITY OR MEDICAL BENEFITS BECAUSE OF ANY PRIOR INJURY, WHETHER WORK-RELATED OR NON WORK-RELATED.**
- (2) **IF A PERMANENT IMPAIRMENT RATING IS REDUCED ON AN ADMISSION BASED ON A PRIOR WORK-RELATED INJURY A COPY OF THE PREVIOUS AWARD OR SETTLEMENT SHALL BE ATTACHED TO THE ADMISSION AND MUST ESTABLISH THAT THE AWARD OR SETTLEMENT WAS FOR THE SAME BODY PART. IF A PERMANENT IMPAIRMENT RATING IS REDUCED ON AN ADMISSION BASED ON NON-WORK-RELATED INJURY, DOCUMENTATION SHALL BE ATTACHED TO THE ADMISSION ESTABLISHING PRIOR IMPAIRMENT TO THE SAME BODY PART THAT WAS IDENTIFIED, TREATED AND INDEPENDENTLY DISABLING AT THE TIME OF THE WORK-RELATED INJURY.**

## 5-12 RECEIPTS

Upon demand of the Director, an insurer shall produce to the Division a receipt, canceled check, or other proof substantiating payment of compensation **ANY AMOUNT DUE** to the claimant or medical reimbursement to a provider or claimant.

## 5-13 INFORMATION ON CLAIMS ADJUSTING

**(A)** Every insurer, or its designated claims adjusting administrator; shall provide the following information on claims adjusting practices to the Division:

~~(A)(1)~~ **(1)** The name, address, and telephone number **AND E-MAIL ADDRESS** of the administrator(s) responsible for its claims adjusting. ~~This information shall be provided upon request or within 30 days of any change in the administrator(s) or the geographical location of the administrator(s). Notice of such change shall be provided in writing to both the claimant and the Division. Notice shall include the name, address, and toll-free telephone number of the claims administrator(s).~~

~~(B) (2)~~ A list of all claims established with the Division that are affected by the change described in the preceding paragraph. The list shall include claimant name, social security number, date of injury, insurer's claim number, and worker's compensation claim number, if available. **WITHIN 30 DAYS OF ANY CHANGE IN ADMINISTRATOR(S) RESPONSIBLE FOR CLAIMS ADJUSTING, BOTH THE TRANSFERRING AND RECEIVING ADMINISTRATORS SHALL COMPLETE A "NOTICE OF CHANGE OF CARRIER OR ADJUSTING FIRM" ON THE DIVISION PROVIDED FORM.**

~~(C) (3)~~ Upon request of the Director, any or all records, including any insurer administrative policies or procedures, pertaining to the adjusting of Colorado Workers' Compensation claims. This authority shall not extend to personnel records of claims personnel. All documents shall remain confidential.

**(B) WITHIN 30 DAYS OF ANY CHANGE IN THE ADMINISTRATOR(S) OR THE GEOGRAPHICAL LOCATION OF THE ADMINISTRATOR(S) NOTICE OF SUCH CHANGE SHALL BE PROVIDED IN WRITING TO THE CLAIMANT. NOTICE SHALL INCLUDE THE NAME, ADDRESS, AND TOLL-FREE TELEPHONE NUMBER OF THE CLAIMS ADMINISTRATOR(S).**

## 5-14 CORRESPONDENCE FROM THE DIVISION

**(A) EVERY INSURER AND SELF-INSURED EMPLOYER SHALL PROVIDE A MAILING ADDRESS FOR THE RECEIPT OF COMMUNICATION FROM THE DIVISION. ALL CORRESPONDENCE FROM THE DIVISION REGARDING THE CLAIM WILL BE SENT TO THE ADDRESS PROVIDED BY THE INSURER OR SELF-INSURED EMPLOYER. MAILING TO THE ADDRESS PROVIDED IS DEEMED GOOD SERVICE.**

**(B) AN INSURER OR SELF-INSURED EMPLOYER MAY DESIGNATE A THIRD PARTY ADMINISTRATOR (TPA) TO HANDLE SPECIFIC CLAIMS BY NOTING THE DESIGNATION ON THE FIRST REPORT OF INJURY OR AN ADMISSION OF LIABILITY. THE DIVISION WILL ONLY DIRECT CORRESPONDENCE TO THE TPA FOLLOWING SUCH A DESIGNATION.**

- (1) **IN CLAIMS INITIATED BY A WORKERS' CLAIM FOR COMPENSATION, THE DIVISION WILL FORWARD THE CLAIM TO THE INSURER OR SELF-INSURED EMPLOYER ALONG WITH A REQUEST FOR A POSITION STATEMENT. THE INSURER OR SELF-INSURED EMPLOYER SHALL BE RESPONSIBLE FOR FORWARDING THE CLAIM TO THE THIRD PARTY ADMINISTRATOR (IF ANY).**
- (2) **THE INSURER OR SELF-INSURED EMPLOYER REMAINS RESPONSIBLE FOR ENSURING COMPLIANCE WITH THESE RULES OF PROCEDURE AS WELL AS THE WORKERS' COMPENSATION ACT REGARDLESS OF ANY DESIGNATION OF A THIRD PARTY ADMINISTRATOR.**

5-15 SURVEYS

- (A) Within 30 days following closure of each claim that was reported to the Division, the insurer shall survey the claimant. If the claimant is deceased the survey shall be presented to the claimant's dependents, if there are such dependents. If two or more claims have been merged or consolidated, one survey may be presented.
- (B) If the claimant has previously authorized the insurer to communicate through electronic transmission, the survey may be sent to the claimant electronically. Otherwise, the survey shall be mailed to the claimant. If mailed, along with the survey, the insurer shall provide a return postage pre-paid envelope for the claimant to use when returning the survey.
- (C) The survey shall include the name of the insurer. The survey shall also have a space for the claimant to sign if communicated by mail. The survey shall include the following language: "This survey relates to your recent workers' compensation claim. We would like to find out how satisfied you are with the way your claim was handled." The survey shall include instructions as to how to return the completed survey to the insurer, and the sentence "Insurers and employers are prohibited by law from taking any disciplinary action or otherwise retaliating against those who respond to this survey." In addition, the survey shall set forth only the following questions:
  - (1) On a scale from 1 to 5, with 1 being the least satisfied and 5 being the most satisfied, please describe your satisfaction with the level of courtesy shown to you in relation to your workers' compensation claim.  

1      2      3      4      5
  - (2) On a scale from 1 to 5, with 1 being the least satisfied and 5 being the most satisfied, please describe your satisfaction with how promptly you received medical care.  

1      2      3      4      5
  - (3) On a scale from 1 to 5, with 1 being the least satisfied and 5 being the most satisfied, please describe your satisfaction with how promptly your claim was handled.  

1      2      3      4      5

- (4) On a scale from 1 to 5, with 1 being the least satisfied and 5 being the most satisfied, please describe your satisfaction with how quickly any disputes in your claim were resolved. If you did not have any disputes, please mark NA.

1          2          3          4          5          NA

- (5) On a scale from 1 to 5, with 1 being the least satisfied and 5 being the most satisfied, please describe your overall satisfaction with the way your claim was handled.

1          2          3          4          5

- (6) The name of the adjuster handling your claim, if known.

- (D) On or before the last day of January, 2011, and on or before the last day of January in each following year, the insurer shall report the survey results to the Division. The report shall include the total number of surveys presented to claimants during the preceding calendar year, but shall be based on all survey results actually received by the insurer during that time. For the questions set out in (C)(1), (C)(2), (C)(3) and (C)(5) above, the insurer shall report the number of responses to the question and the average score based on those responses. For question (C)(4), the insurer shall report the number of responses to the question, the number of responses that indicated NA, and the average of those responses that provided a numerical response. There shall be only one report per insurer per year. The insurer shall maintain the actual survey responses for a minimum of six months after providing the results to the Division, and shall provide the survey results to the Division upon request.

# Notice of Rulemaking Hearing

**Tracking number**

2014-00897

**Department**

1100 - Department of Labor and Employment

**Agency**

1101 - Division of Oil and Public Safety

**CCR number**

7 CCR 1101-8

**Rule title**

CONVEYANCE REGULATIONS

## Rulemaking Hearing

**Date**

10/07/2014

**Time**

10:00 AM

**Location**

633 17th Street, Suite 500, Denver, CO 80202

**Subjects and issues involved**

The Colorado Department of Labor and Employment (CDLE) Division of Oil and Public Safety (OPS) is proposing changes to Conveyance Regulation 7 CCR 1101-8

**Statutory authority**

Title 9 Article 5.5 §116 of Colorado Revised Statutes

## Contact information

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**- - - THIS PAGE INCLUDES NOTES TO STAKEHOLDERS FOR REVIEW OF THE PROPOSED REGULATIONS AND WILL BE REMOVED PRIOR TO RULE ADOPTION - - -**

### **Proposed Revisions to the Conveyance Regulations**

The Division of Oil and Public Safety (OPS) is proposing changes to the Conveyance Regulations. These proposed changes include reformatting the regulations to enhance clarity, flow, comprehensiveness and accuracy. In addition, OPS proposes a few technical changes that are identified in the draft document. OPS has worked with stakeholders to identify and address any major issues. Following the review of stakeholder comments, this version of the document was developed for review by all interested parties. OPS welcomes and appreciates stakeholder input regarding these proposed changes.

### **Review and Feedback to OPS**

The proposed changes within this DRAFT document are identified as follows:

- All language added is **red** with underline.
- All deleted language is ~~red~~ with strikethrough.
- Language that is **[bold, bracketed and purple]** is a comment to clarify the change or why the change was made. This language will be removed from the regulations prior to adoption.

### **Questions During Document Review**

Questions during the review process can be communicated to the following OPS staff:

Greg Johnson, Conveyance Program Manager  
[greg.johnson@state.co.us](mailto:greg.johnson@state.co.us)  
303-318-8536

### **Submission of Public Comment**

Please communicate comments in writing to OPS at:

**Division of Oil and Public Safety**  
**633 17<sup>th</sup> Street, Suite 500**  
**Denver, CO 80202-3610**

or

[greg.johnson@state.co.us](mailto:greg.johnson@state.co.us)

**- - - THIS PAGE INCLUDES NOTES TO STAKEHOLDERS FOR REVIEW OF THE PROPOSED REGULATIONS AND WILL BE REMOVED PRIOR TO RULE ADOPTION - - -**

**COLORADO DEPARTMENT OF  
LABOR AND EMPLOYMENT  
DIVISION OF OIL AND PUBLIC SAFETY  
CONVEYANCE REGULATIONS**

**7 C.C.R. 1101-8**

**Effective: ~~February 1, 2013~~ January 1, 2015**





## CONVEYANCE REGULATIONS

### COLORADO DEPARTMENT OF LABOR AND EMPLOYMENT DIVISION OF OIL AND PUBLIC SAFETY

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## ARTICLE 1 GENERAL PROVISIONS

### Section 1-1 Statement of Basis and Purpose

These regulations are promulgated to establish rules for the design, installation, registration, construction, operation, maintenance, and inspection of conveyances, and for the licensing of conveyance mechanics, contractors, and inspectors. The purpose of these regulations is to ensure that elevators and other automated conveyances, accessible to the general public, are correctly and safely installed and operated within the state. **[OPS interprets the conveyance statute intent as regulation of only those conveyances that are accessible to the general public. SPPE and wind turbine tower elevators generally fall into these categories. Statute clearly gives authority and flexibility to local jurisdictions to go beyond and be more stringent than these minimum standards to regulate conveyances excluded from these regulations.]**

### Section 1-2 Statutory Authority

These regulations have been created pursuant to the Elevator and Escalator Certification Act, Title 9 Article 5.5 Section 116 of the Colorado Revised Statutes (C.R.S.).

### Section 1-3 Effective Date

These amended regulations shall be effective on January 1, 2015 ~~February 1, 2013~~ and supersedes all prior editions. The prior editions of the regulations were effective February 1, 2013, January 1, 2011, January 1, 2010 and January 1, 2009. Emergency regulations were in effect from April 2, 2008 until the promulgation of permanent rules.

The effective date for the requirements regarding Personnel Hoists, as described in ANSI A10.4, will be July 1, 2017. **[The statute does not include the ANSI A10.4 code for these temporary construction lifts but does include the term "Personnel Hoists" in the scope of regulated items. There are several technical issues, including licensing of mechanics, that must be addressed prior to regulation of these lifts, therefore a future enforcement date has been established.]**

### Section 1-4 Definitions

Terms in these regulations shall have the same definitions as those found in Article 5.5 of Title 9 of the C.R.S. or as defined below.

~~(1)~~ **ACCEPTANCE INSPECTION.** The initial inspection and witnessing of acceptance testing, conducted by a licensed Conveyance Inspector, of a new or altered conveyance to verify compliance with standards as defined in these regulations.

ACCEPTANCE TEST. The testing, conducted by a Conveyance Mechanic, of a new or altered conveyance to verify compliance with standards as defined in these regulations.

~~(2)~~ **ADMINISTRATOR.** The Director of the Division of Oil and Public Safety within the Department of Labor and Employment or the Director's designee.

~~(3)~~ **ADVISORY BOARD.** A group of experts within the conveyance industry chosen by the Administrator to assist in the development of regulations and resolution of issues relating to the operation of the program.

~~(4)~~ AFFILIATED. An employment or subsidiary relationship between two entities.

~~(5)~~ AHJ CONVEYANCE INSPECTOR. ~~A conveyance inspector who is employed by an Approved AHJ to inspect a conveyance and who is not affiliated with the conveyance mechanic whose repair, alteration or installation is being inspected.~~ [MOVE TO INSPECTOR, AHJ CONVEYANCE

~~(6)~~ AHJ-APPOINTED CONVEYANCE INSPECTOR. ~~A conveyance inspector who is employed by a non-profit entity, voluntary association or other council of governments that has been appointed or designated by an Approved AHJ to provide conveyance plan review and/or inspection services and who is not affiliated with the conveyance mechanic whose repair, alteration or installation is being inspected.~~ [MOVE TO INSPECTOR, AHJ-APPOINTED]

~~(7)~~ ALTERATION. As defined in American Society of Mechanical Engineers (ASME) A17.1: any change to equipment, including its parts, components, and/or subsystems, other than maintenance, repair, or replacement and as further defined by the Administrator as an activity that requires an alteration permit, as defined in Section 2-4-1.

~~(8)~~ ALTERATION, -EMERGENCY. An alteration that is limited to minor alteration activities and to those facilities where the building is dependent on the conveyance as the sole means of access and no other conveyance is available. The conveyance contractor performing such alteration shall submit a minor alteration permit application to the Administrator or Approved AHJ by the next working day.

~~(9)~~ ALTERATION, -MAJOR. An alteration that is extensive in scope such that it warrants a complete witnessed acceptance inspection and applicable tests.

~~(10)~~ ALTERATION, -MINOR. An alteration that is minor in scope, such that it only warrants the specific component(s) being altered to be tested and inspected.

~~(11)~~ ALTERATION, -SUBSTANTIAL. An alteration that includes:

- (a) The change in the type of service of an elevator, or
- (b) The change in the type of operation control or motion control on an elevator, or
- (c) The replacement of a controller in conjunction with another alteration on an electric elevator.

~~(12)~~ ALTERNATE MATERIALS AND METHODS REQUEST. The submittal of documentation to the Administrator or Approved AHJ by a conveyance owner or conveyance contractor that justifies the use of alternate methods or materials for the implementation of standards adopted pursuant to these regulations.

~~(13)~~ ANSI. American National Standards Institute.

ANSI/ASSE A10.4. Personnel Hoists and Employee Elevators on Construction and Demolition Sites.

~~(14)~~ APPROVED AUTHORITY HAVING JURISDICTION (AHJ). ~~A local jurisdiction or any agent thereof that has been approved by the Administrator pursuant to Section 2-3 of these regulations.~~ [MOVE TO AUTHORITY HAVING JURISDICTION, APPROVED]

~~(15)~~ ASCE. American Society of Civil Engineers.

~~(16)~~ ASCE 21. Automated People Mover Standards published as ASCE 21 Parts 1 through 4, as amended by the ASCE.

~~(17)~~ ASME. American Society of Mechanical Engineers.

~~(18)~~ ASME A17.1. Safety Code for Elevators and Escalators published by ASME.

~~(19)~~ ASME A17.2. Guide for Inspection of Elevators, Escalators, and Moving Walks published by ASME.

~~(20)~~ ASME A17.3. Safety Code for Existing Elevators and Escalators published by ASME.

~~(21)~~ ASME A18.1. Safety Standard for Platform Lifts and Stairway Chairlifts published by ASME.

~~(22) ASME QEI 1. Standard for the Qualifications of Elevator Inspectors published by ASME.~~

ASSE. American Society of Safety Engineers.

~~(23)~~ AUTHORITY HAVING JURISDICTION. A local jurisdiction that includes a fire department, fire district or fire authority that is responsible for enforcing the requirements of a code or standard or for approving equipment, materials, an installation or a procedure.

AUTHORITY HAVING JURISDICTION (AHJ), APPROVED. A local jurisdiction or any agent thereof that has been approved by the Administrator pursuant to Section 2-33-1 of these regulations. **[MOVED FROM APPROVED AUTHORITY HAVING JURISDICTION]**

AUTHORIZED PERSONNEL. As defined in ASME A17.1; "persons who have been instructed in the operation of the equipment and designated by the owner to use the equipment." This does not include the general public.

~~(24)~~ AUTOMATED PEOPLE MOVER (APM). As defined in ASCE 21; "a guided transit mode with fully automated operation, featuring vehicles that operate on guideways with exclusive right-of-way."

~~(25)~~ AUTOMATED PEOPLE MOVER ALTERATION. Any change to equipment, including its parts, components and/or subsystems, other than maintenance, repair or replacement that does not materially affect the APM integrity, operation or control.

~~(26)~~ CERTIFICATE OF OPERATION (CO). A document issued by the Administrator or an Approved AHJ for a conveyance ~~that indicates~~ indicating that the conveyance has had the required safety inspection and tests, and that fees have been paid as set forth in these regulations.

CERTIFICATE OF OPERATION, CONSTRUCTION (CCO). A document issued by the Administrator or an Approved AHJ for a conveyance that allows the temporary operation of a conveyance for the support of construction activities and is not accessible to the public. **[MOVED FROM CONSTRUCTION CERTIFICATE OF OPERATION]**

CERTIFICATE OF OPERATION, TEMPORARY (TCO). A document issued by the Administrator or an Approved AHJ for a conveyance that allows the temporary operation of a conveyance for public use if life safety issues have not been identified following the inspection of the conveyance by a conveyance inspector. **[MOVED FROM TEMPORARY CERTIFICATE OF OPERATION]**

~~(27)~~ CERTIFICATE OF SUBSTANTIAL COMPLETION. Certificate issued by the owner of an APM system stating that work relating to a product has progressed to the point that the owner can

beneficially occupy or utilize the product for the purpose for which it is intended and the work and product comply with all applicable codes and regulations.

~~(28) CONSTRUCTION CERTIFICATE OF OPERATION. A document issued by the Administrator or an Approved AHJ for a conveyance that allows the temporary operation of a conveyance for the support of construction activities and is not accessible to the public.~~ **[MOVE TO CERTIFICATE OF OPERATION, CONSTRUCTION]**

CONVEYANCE. A mechanical device to which these regulations apply pursuant to Section 1-5.

~~(29) CONVEYANCE CONTRACTOR. A person who holds a current conveyance contractor license issued by the Administrator.~~

~~(30) CONVEYANCE INSPECTOR. A person as described in (5), (6) or (52) of this Section who holds a current conveyance inspector license issued by the Administrator and who is not affiliated with the conveyance owner, general contractor or conveyance contractor performing work on the conveyance.~~ **[MOVE TO INSPECTOR, CONVEYANCE]**

~~(31) CONVEYANCE MECHANIC. A person who holds a current conveyance mechanic or temporary conveyance mechanic license issued by the Administrator~~ and who is employed by a Conveyance Contractor.

~~(32) CONVEYANCE OWNER. The owner of the conveyance or assigned agent responsible for maintaining the conveyance.~~

~~(33) DOOR RESTRICTORS. As described in~~ the currently adopted edition of ASME A17.3-2005 Section 2.7.5A17.1.

~~(34) DUMBWAITER. As defined in ASME A17.1:-;~~ a hoisting and lowering mechanism equipped with a car of limited size that moves in guide rails and serves two or more landings that is used exclusively for carrying materials.

~~(35) ELECTRIC ELEVATOR. As defined in ASME A17.1:-;~~ a power elevator in which the energy is applied, by means of an electric driving machine.

~~(36) ELEVATOR. As defined in ASME A17.1:-;~~ a hoisting or lowering mechanism, equipped with a car that moves within guides and serves two or more landings.

ELEVATOR, SPECIAL PURPOSE PERSONNEL. As defined in ASME A17.1; An elevator that is limited in size, capacity, and speed, and permanently installed in structures, such as grain elevators, radio antennae, bridge towers, underground facilities, power plants, and similar structures to provide vertical transportation of authorized personnel and their tools and equipment only.

ELEVATOR, WIND TURBINE TOWER. As defined in ASME A17.1; A hoisting and lowering mechanism equipped with a car located within a wind turbine tower.

~~(37) ESCALATOR. As defined in ASME A17.1:-;~~ a power-driven inclined, continuous stairway used for raising or lowering passengers.

~~(38) FIREFIGHTERS' SERVICE. As described in~~ the currently adopted edition of ASME A17.1A17.3-2005 Section 3.11.3.

~~(39)~~ HYDRAULIC ELEVATOR. As defined in ASME A17.1~~:-~~ a power elevator in which the energy is applied, by means of a liquid under pressure, in a hydraulic jack.

~~(40)~~ INJURY. An injury that results in death or requires medical treatment (other than first aid) administered by a physician or by registered professional personnel under the standing orders of a physician. Medical treatment does not include first aid treatment for one time treatment and subsequent observation of minor scratches, cuts, burns, splinters, and any other minor injuries that do not ordinarily require medical care even though treatment is provided by a physician or by registered professional personnel.

INSPECTOR, AHJ. A conveyance inspector who holds a current conveyance inspector license issued by the Administrator, is employed by an Approved AHJ to inspect a conveyance, and who is not affiliated with the conveyance mechanic whose repair, alteration or installation is being inspected.

INSPECTOR, AHJ-APPOINTED. A conveyance inspector who holds a current conveyance inspector license issued by the Administrator, is employed by a non-profit entity, voluntary association or other council of governments that has been appointed or designated by an Approved AHJ to provide conveyance plan review and/or inspection services and who is not affiliated with the conveyance mechanic whose repair, alteration or installation is being inspected.

INSPECTOR, CONVEYANCE. A person ~~as described in (5), (6) or (52) of this Section who holds a current conveyance inspector license issued by the Administrator and who is not affiliated with the conveyance owner, general contractor or conveyance contractor performing work on the conveyance~~ who meets the definition of AHJ Inspector, AHJ-Appointed Inspector or Private Inspector.

INSPECTOR, PRIVATE. A conveyance inspector who holds a current conveyance inspector license issued by the Administrator, is not an Approved AHJ or Approved AHJ-appointed conveyance inspector, is retained by the conveyance owner to inspect a conveyance, is not affiliated with the conveyance owner, general contractor or conveyance contractor who is performing work on the conveyance, or with the conveyance mechanic whose repair, alteration, or installation is being inspected.

~~(41)~~ LICENSE. A written license, duly issued by the Administrator, authorizing a person, sole proprietor, firm, or company to carry on the business of erecting, constructing, installing, altering, servicing, repairing, maintaining or performing inspections of conveyances covered by these regulations.

~~(42)~~ LOCAL JURISDICTION. A city, county, city and county or any agent thereof.

MAINTENANCE CONTROL PROGRAM (MCP). A documented set of maintenance tasks, maintenance procedures, examinations, and tests to ensure that equipment is maintained in compliance with the requirements of the currently adopted edition of ASME A17.1.

~~(43)~~ MANAGING AGENT. A person or company that is hired by the building owner or lessee to be responsible for maintenance of the conveyance(s).

~~(44)~~ MATERIAL RISK. A risk to public safety as determined by the Administrator in cooperation with local jurisdictions.

~~(45)~~ MOTION CONTROL. As defined in ASME A17.1~~:-~~ that portion of a control system that governs the acceleration, speed, retardation, and stopping of the moving member.



- ~~(46)~~ MOVING WALK. As defined in ASME A17.1: a type of passenger-carrying device on which passengers stand or walk and in which the passenger-carrying surface remains parallel to its direction of motion and is uninterrupted.
- ~~(47)~~ NFPA 13. The National Fire Protection Association 13 – Standard for the Installation of Sprinkler Systems.
- ~~(48)~~ OPERATION CONTROL. As defined in ASME A17.1: that portion of a control system that initiates the starting, stopping, and direction of motion, in response to a signal from an operating device.
- ~~(49)~~ PERIODIC INSPECTION. The inspection and testing conducted by a licensed conveyance inspector of an existing conveyance to verify compliance with standards as defined in these regulations.
- ~~(50)~~ PERSONNEL HOIST. ~~A “special-purpose personnel elevator” as defined in ASME A17.1; “an elevator that is limited in size, capacity, and speed, and permanently installed in structures, such as grain elevators, radio antennae, bridge towers, underground facilities, power plants, and similar structures to provide vertical transportation of authorized personnel and their tools and equipment only.” A personnel hoist or employee elevator as defined in ANSI A10.4-2007; a mechanism and its hoistway for use in connection with the construction, alteration, ongoing maintenance or demolition of a building, structure or other work. It is used for hoisting and lowering workers or materials or both, and is equipped with a car that moves vertically on guide members.~~ [personnel hoist and special purpose personnel elevator are now as defined in code]
- ~~(51)~~ PLATFORM LIFT. As defined in ASME A18.1; “a powered hoisting and lowering mechanism designed to transport mobility impaired persons on a guided platform that travels vertically or on an incline.”
- ~~(52)~~ PRIVATE CONVEYANCE INSPECTOR. ~~A conveyance inspector who is not an Approved AHJ or Approved AHJ-appointed conveyance inspector but is retained by the conveyance owner to inspect a conveyance and who is not affiliated with the conveyance mechanic whose repair, alteration, or installation is being inspected.~~ [MOVE TO INSPECTOR, PRIVATE]
- ~~(53)~~ PRIVATE RESIDENCE CONVEYANCE. A power passenger conveyance that is limited in size, capacity, rise, and speed and is designed to be installed in a private residence or in a multiple dwelling as a means of access to a private residence.
- ~~(54)~~ REFINISH. Those cab refinishing activities that are limited to “in place” work such that the removal of the cab panels or walls is not required and does not include any change in the type of materials of the existing cab interior. These cab refinishing activities shall not add or subtract weight to the existing cab.
- ~~(55)~~ REPAIR. As defined in ASME A17.1; “reconditioning or renewal of parts, components, and/or subsystems necessary to keep equipment in compliance with applicable Code requirements”.
- ~~(56)~~ REPLACEMENT. As defined in ASME A17.1; “the substitution of a device or component and/or subsystems, in its entirety, with a unit that is basically the same as the original for the purpose of ensuring performance in accordance with applicable Code requirements”.
- SYSTEM VERIFICATION. Activities with a set of minimum standards by which an APM system application shall be verified to meet the ASCE 21 Parts 1, 2 and 3 and which shall include the



elements of design review, analysis, qualification test, acceptance test, inspection, demonstration, and previous experience as listed in ASCE 21 Part 4 Section 14 (System Verification and Demonstration).

~~(58) TEMPORARY CERTIFICATE OF OPERATION. A document issued by the Administrator or an Approved AHJ for a conveyance that allows the temporary operation of a conveyance for public use if life safety issues have not been identified following the inspection of the conveyance by a conveyance inspector.~~ [MOVE TO CERTIFICATE OF OPERATION, TEMPORARY]

~~(59)~~ TYPE OF SERVICE. The passenger or freight classification for the use of an elevator.

### Section 1-5 Scope

These Conveyance Regulations apply to all conveyances listed below, as defined in Section 1-4, except as provided in Section 1-5(4).

(1) Hoisting and lowering mechanisms equipped with a car or platform that moves between two or more landings. Such equipment includes, but is not limited to:

- (a) Elevators;
- (b) Platform lifts;
- (c) Personnel hoists; and
- (d) Dumbwaiters.

(2) Power-driven stairways and walkways for carrying persons between landings. Such equipment includes, but is not limited to:

- (a) Escalators; and
- (b) Moving walks.

(3) Automated People Movers (APM) as defined in ASCE 21.

(4) The following, ~~as provided in § 9-5.5-104 (2) C.R.S.~~, are not included in the scope of these regulations:

- (a) Material hoists within the scope of ANSI A10.5;
- (b) Manlifts within the scope of ASME A90.1;
- (c) Mobile scaffolds, towers, and platforms within the scope of ANSI A92;
- (d) Powered platforms and equipment for exterior and interior maintenance within the scope of ASME A120.1;
- (e) Conveyors and related equipment within the scope of ASME B20.1;
- (f) Cranes, derricks, hoists, hooks, jacks, and slings within the scope of ASME B30.10;

- (g) Industrial trucks within the scope of ASME B56;
- (h) Items of portable equipment that are not portable escalators;
- (i) Tiering or piling machines used to move materials between storage locations that operate entirely within one story;
- (j) Equipment for feeding or positioning materials at machine tools, printing presses, and other similar equipment;
- (k) Skip or furnace hoists;
- (l) Wharf ramps;
- (m) Railroad car lifts or dumpers;
- (n) Line jacks, false cars, shafters, moving platforms, and similar equipment used by a certified conveyance contractor for installing a conveyance;
- (o) Conveyances at facilities regulated by the Mine Safety and Health Administration in the United States Department of Labor, or its successor, pursuant to the "Federal Mine Safety and Health Act of 1977," Pub.L. 91-173, codified at 30 U.S.C. sec. 801 et seq., as amended;
- (p) Elevators within the facilities of gas or electric utilities that are not accessible to the public;
- (q) A passenger tramway defined in §25-5-702, C.R.S.;
- (r) Conveyances in a single-family residence; or
- (s) Stairway chairlifts as defined in ASME A18.1.

(t) Special purpose personnel elevators and wind turbine tower elevators that are used by authorized personnel, but are not accessible to or used by customers or members of the general public. [This requires regulation of elevators within grain elevators, radio antennae, bridge towers, underground facilities, power plants, wind turbine towers, and similar structures only if they are accessible to the general public. The regulation of wind turbine tower elevators is not an issue of whether these units are considered an electrical utility (subsection (p) above), but whether there is access to the general public. Per conversation with an ASME A17.1 wind turbine elevator committee member, section 5.11 will be extracted from A17.1 and a new code created for these units.]

## ARTICLE 2 ADMINISTRATION

### Section 2-1 Registration

- (1) The conveyance owner shall register the conveyance with the Administrator.
- (2) The registration notice shall include:
  - (a) A completed conveyance registration form, which is provided on the Administrator's website; and

(b) The registration fee of \$200 per conveyance.

(3) Upon the Administrator's approval of the registration, the Administrator will assign a unique number to each conveyance and to the facility at which each conveyance is located. ~~The Administrator will provide a registration data plate to the conveyance owner that shall be affixed near the upper right hand corner of the controller or near the serial number of the conveyance, if a controller is not present.~~ [Because the logistics of accurately applying this label or tag could not be determined, the requirement was removed]

(4) Conveyances installed after July 1, 2008, shall be registered with the Administrator before they are placed into service.

(5) The conveyance owner shall be responsible for notifying the Administrator of any change in owner~~ship~~ or management contact information within thirty (30) days of change.

## **Section 2-2 Adoption of Nationally Recognized Safety Standards**

### **Section 2-2-1 Standard Adoption**

(1) Within this regulation, the Administrator adopts standards and codes as listed below except as amended by the Administrator.

(a) ASME A17.1 - ~~2007~~2013

(b) ASME A18.1 - ~~2005~~2011

(c) ASME A17.3 - 2005

(d) ASCE 21 Parts 1, 2, 3, and 4

(2) Nothing in these regulations prohibits a local jurisdiction from adopting and enforcing standards which are more stringent than the minimum requirements included herein.

(3) Following the initial adoption of standards described in (1) of this Section, the Approved AHJ will remain current in adoption of future standard editions as they are adopted by the Administrator within the timeframe stated in the Memorandum of Agreement (MOA) or as determined by the Administrator.

(4) The Administrator, in cooperation with the Advisory Board, shall review the latest edition of a standard listed in (1) of this Section and shall determine whether all or any portion of the edition of the standard will be modified or deleted as it pertains to these regulations.

(5) The standards listed in (1) of this Section may be examined by contacting the Conveyance Section Program Manager at the office of the Administrator located at 633 17<sup>th</sup> Street, Suite 500 in Denver, Colorado. ~~These standards or materials incorporated in these standards may also be examined at any state publications depository library.~~

## **Section 2-3 ~~Periodic Inspections, and Tests~~ and Maintenance**

### **Section 2-3-1 Periodic Inspections and Certificates of Operation**

### 2-3-1-1 Periodic Inspection

(1) The conveyance owner shall arrange for a periodic inspection of an existing conveyance on an annual frequency. ~~The periodic inspection process and issuance of a Certificate of Operation shall be as follows. The inspection shall be completed by a conveyance inspector. The conveyance owner may authorize a general contractor or conveyance contractor to select, contract with, or hire a conveyance inspector.~~

(2) The conveyance owner shall provide onsite access at all times to all keys necessary for authorized personnel to conduct maintenance and inspections and to Administrator personnel to conduct inspections. These keys shall include all keys listed in Section 8.1, as applicable, of the currently adopted edition of ASME A17.1. Such keys shall include, but not be limited to: [This language is added to inform the owner regarding the requirement in code that keys must be made available. If the keys are not made available to inspectors, the inspector will indicate a violation on the inspection report and the inspection will not be completed. To ensure that this requirement is clear even without review of ASME A17.1 Section 8.1, the most critical keys are listed in (a) through (e).]

(a) Machine room or control room, or machine or control space

(b) Hoistway access and hoistway enable switch

(c) Phase I and phase II firefighters' emergency operation switch

(d) Emergency or standby power emergency access selector switch

(e) Pit access, if applicable

(f) Equipment access panels

~~(23)~~ The conveyance inspector shall:

(a) Shall obtain the permission of the conveyance owner to conduct the periodic inspection, acceptance inspection or test witness inspection, prior to commencing inspection activities.

~~(ab)~~ Inspect the conveyance to the applicable code edition as follows:

(i) The code edition adopted by the AHJ at the time of original installation and/or alteration or

(ii) If no code edition was adopted by the AHJ, the inspector shall inspect to the code edition that was in effect at time of original installation and/or alteration.

~~(bc)~~ Conduct the inspection using the latest edition of ASME A17.2 as guidance.

~~(ed)~~ Witness all applicable tests in accordance with Section 2-3-2~~(2)~~.

~~(de)~~ Document results of the inspection on an inspection report form provided on the Administrator's website. All applicable portions of the inspection report shall be completed.

(ef) Submit the ~~passing-completed~~ inspection report(s) to the conveyance owner.

(34) The conveyance owner shall submit the passing inspection report(s) and the required fees of \$30 per conveyance listed in Section 2-3-1(10) (Certificate of Operation) to the office of the Administrator within 30 days of the date of inspection.

(5) All inspections must be completed prior to the expiration date of the current Certificate of Operation. The Administrator may commence enforcement actions for operating the conveyance without a current Certificate of Operation.

(6) The expiration date for the ensuing Certificate of Operation will be set at the last day of the month of the inspection date.

(7) The inspection may occur as early as the first day of the month prior of the expiration of the Certificate of Operation to maintain the current Certificate of Operation expiration date. If the inspection occurs before this date, the beginning date of the ensuing Certificate of Operation will be set at the last day of the month of the inspection.

### **2-3-1-2 Certificate of Operation**

(1) A conveyance shall not operate unless the Conveyance Owner maintains a current Certificate of Operation for the conveyance. The Certificate of Operation must be available for review at the property where the conveyance is located.

(42) Following the Administrator's review of the inspection report described in 2-3-1-1 and determination that the conveyance is in compliance with the applicable standards listed in Section 2-2-1(1) or the standard under which the conveyance was installed or altered and the conveyance is registered according to Section 2-1 of these regulations, the Administrator will issue the Certificate of Operation for the conveyance.

(53) The Administrator may not issue the Certificate of Operation for the conveyance unless all deficiencies identified during previous periodic inspections have been corrected.

### **2-3-1-3 Temporary Certificate of Operation**

(61) The Administrator may issue a Temporary Certificate of Operation for a conveyance if the temporary operation of the conveyance by the public is necessary and imminent life safety issues have not been identified by a conveyance inspector. The Temporary Certificate of Operation shall be valid for a period as determined by the Administrator but shall not exceed one hundred and eighty (180) days from the date of issuance.

### **2-3-1-4 Construction Certificate of Operation**

(71) The Administrator may issue a Construction Certificate of Operation for an elevator that shall be valid for a period of ninety (90) days if the temporary operation of the elevator is necessary to support building construction activities. The operation of the elevator shall conform to the following.

(a) The elevator shall be registered with the Administrator prior to the elevator being placed into service.

(b) The Administrator or Approved AHJ has issued an installation or alteration permit.

(c) A full passing acceptance inspection and a completed conveyance inspection form shall be submitted to the Administrator or Approved AHJ. Fire service operation and fire rating of the hoistway and machine room do not need to be completed for a passing acceptance inspection for a Construction Certificate of Operation.

(d) The following items are required during construction use of the conveyance.

(i) The elevator shall conform to the requirements of the currently adopted edition of ASME A17.1 2007, Part 5.10.

(ii) All testing shall be completed by a licensed conveyance mechanic and witnessed by a licensed inspector.

(iii) The elevator shall have a designated attendant for operation.

(iv) The elevator shall be run on independent service only.

(v) A means of 2-way communication shall be provided. Cell phones shall not be accepted as a means of 2-way communication.

(vi) The machine room shall be enclosed and have a lockable door to prevent entry.

(vii) The hall call stations, if installed, shall be inactive.

(viii) Penetrations that allow an object to be inserted in the hoistway while the elevator is in motion shall not be allowed.

(ix) Substantially flush floor surface shall be used in front of the entrances.

(x) Adequate lighting shall be used in front of the entrances and in the machine room.

(xi) The Construction Certificate of Operation shall be posted inside the elevator and shall be visible to riders at all times.

(e) If the finished cab interior was not installed when the initial tests were performed for a Construction Certificate of Operation, all tests shall be performed again before an ~~an~~ Acceptance Certificate of Operation is issued.

~~(82)~~ The Construction Certificate of Operation can be renewed following the inspection by a conveyance inspector and approval of the inspection report by the Administrator or Approved AHJ. A Certificate of Operation for public use will be issued by the Administrator or Approved AHJ only after re-inspection and approval of the inspection report by the Administrator.

~~(9) A private conveyance inspector shall obtain the permission of the conveyance owner to conduct the periodic inspection prior to commencing inspection activities.~~ [MOVED to 2-3-1-1 (2)(a)]

~~(10) Processing fees for installation / alteration permits and inspection reports.~~ [INCORPORATED WITHIN TEXT OF APPLICABLE SECTIONS]

Document	Processing Fee
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<del>Installation Permit Application</del>	<del>\$300.00</del>
<del>Alteration Permit Application (Major or Minor)</del>	<del>\$150.00</del>
<del>Certificate of Operation</del>	<del>\$30.00</del>

~~Note: When applying for either an installation or a major alteration permit, the Certificate of Operation fee of \$30.00 should be included with the payment of the installation or major alteration permit application fees for a total of \$330.00 for an Installation permit and \$180.00 for a major alteration permit application.~~

### Section 2-3-2 Periodic and Acceptance Tests

- (1) Tests referred to as Category 1 and Category 5 in ASME A17.1 shall be performed by a conveyance mechanic employed by a conveyance contractor on all existing conveyances, except for an APM, at the following frequencies.
  - (a) Category 1 test shall be performed annually.
  - (b) Category 5 test shall be performed every five (5) years.
  - (c) Acceptance tests shall be completed in accordance with the applicable provisions of the currently adopted edition of ASME A17.1.
- (2) Tests referred to as One-Year and Five-Year in ASME A18.1 shall be performed by a conveyance mechanic employed by a conveyance contractor on all existing platform lifts at the following frequencies.
  - (a) Three (3) years for platform lifts installed outdoors.
  - (b) Five (5) years ~~or as determined by the Administrator~~ for platform lifts installed indoors.
  - (c) Acceptance tests shall be completed in accordance with the applicable provisions of the currently adopted edition of ASME A18.1.
- (3) The results of ~~these all~~ tests discussed in Section 2-3-2 shall be recorded on the applicable conveyance test report form that is provided on the Administrator's website and be submitted to the Administrator upon request. The test report must be signed by the conveyance mechanic performing the test and, if applicable, the inspector witnessing the test.
- (4) A conveyance inspector shall witness the performance of the following tests.
  - (a) Acceptance tests for conveyances listed in Section 1-5(1), (2) and (3) before the conveyance is placed into service.
    - (i) For new installations, major alterations and substantial alterations, acceptance tests shall be completed in accordance with the applicable provisions of the currently adopted edition of ASME A17.1.

(ii) For minor alterations, only the portion or component that was altered ~~needs to~~must be tested and inspected in accordance with the applicable provisions of the currently adopted edition of ASME A17.1.

(b) Category 1 tests for conveyances listed in Section 1-5(1)(a) ~~through (e)~~ at least once every five (5) years.

(c) Category 5 tests for conveyances listed in Section 1-5(1)(a) ~~through (e)~~ at least once every five (5) years.

(d) Category 1 tests for conveyances listed in Section 1-5(2) every year.

(e) Tests referred to as One-Year and Five-Year in ASME A18.1 at least once every five (5) years for platform lifts installed indoors and at least once every six (6) years for platform lifts installed outdoors.

(5) The frequency of test performance and witnessing as described in this section 2-3-2 is summarized in the following table:

<u>Conveyance Type</u>	<u>Category 1 or One-Year</u>		<u>Category 5 or Five-Year</u>	
	<u>Perform</u>	<u>Witness</u>	<u>Perform</u>	<u>Witness</u>
<u>Traction Elevators</u>	<u>Annually</u>	<u>5 years</u>	<u>5 years</u>	<u>5 years</u>
<u>Hydraulic Elevators</u>	<u>Annually</u>	<u>5 years</u>	<u>5 years<sup>1</sup></u>	<u>5 years<sup>1</sup></u>
<u>Other Elevators<sup>2</sup></u>	<u>Annually</u>	<u>5 years</u>	<u>5 years</u>	<u>5 years</u>
<u>Escalators &amp; Moving Walks</u>	<u>Annually</u>	<u>Annually</u>	<u>Not required</u>	<u>Not required</u>
<u>Indoor Platform Lifts</u>	<u>5 years</u>	<u>5 years</u>	<u>5 years</u>	<u>5 years</u>
<u>Outdoor Platform Lifts</u>	<u>3 years</u>	<u>6 years</u>	<u>3 years</u>	<u>6 years</u>
<u>Private Residence Elevators installed in commercial buildings<sup>3</sup></u>	<u>5 years</u>	<u>5 years</u>	<u>5 years</u>	<u>5 years</u>

<sup>1</sup> A category 5 test is only required to be conducted and witnessed on a hydraulic elevator if the elevator is equipped with safeties, a plunger gripper, a governor, an oil buffer, or an overspeed valve.

<sup>2</sup> Includes roped-hydraulic elevators and LU/LA elevators.

<sup>3</sup> Private Residence Elevators shall not be installed in commercial settings after January 1, 2008, per section 2-4-2(5). For requirements of approved installations, refer to section 2-7(5).



- (6) The conveyance owner or designated conveyance contractor performing the acceptance test shall be responsible to notify the Administrator prior to the test.
- (7) Upon completion of a periodic test or an acceptance test, a metal test tag shall be permanently mounted to the controller, in a readily visible location, in accordance with currently adopted code. [Code requires a metal tag for acceptance tests and a metal or other AHJ-approved format for periodic tests]
- (8) If Category 5 testing without load via alternative test methodologies will be utilized, the conveyance owner or conveyance contractor must notify the Administrator prior to development of the base-line and alternative testing procedures.

### **Section 2-3-3 Maintenance**

- (1) Conveyances listed in ASME A17.1 shall comply with the maintenance requirements listed subsections (2) through (4) below and shall comply with these requirements by July 1, 2015. [The compliance date is 6 months after the effective date of these revisions]
- (52) A ~~written~~ Maintenance Control Program (MCP) shall be in place to maintain the equipment in compliance with ASME A17.1. The MCP shall comply with the following and as described in the currently adopted edition of ASME A17.1:
- (a) An MCP for each conveyance shall be:
- (i) Provided by the conveyance contractor responsible for maintenance or by the conveyance owner. [The owner may need to contract-out the preparation of the MCP if a maintenance contract is not currently in place]
  - (ii) Kept onsite in the machine or control room, or machinery or control space.
  - (iii) Presented in hard-copy or electronic form. The conveyance contractor or conveyance owner shall ensure that the mode of presentation is viewable by conveyance contractors, mechanics, inspectors, and the Administrator at all times from the time of the acceptance inspection and test or from the time of equipment installation or alteration. [This allows for hard-copy or electronic form without Administrator approval but does put the burden on the contractor and/or owner to always provide it in a viewable mode. If the MCP, on-site documentation and maintenance records are not present and viewable, inspectors will be instructed to write this up as a violation and a temporary CO will be issued.]
- (b) The MCP shall include, but not be limited to, the following:
- (i) Required maintenance tasks and procedures, such as cleaning, lubricating and adjusting the equipment.
  - (ii) Code required examination and tests listed with the associated equipment.

(iii) Specified scheduled maintenance intervals.

(iv) Procedures for tests, periodic inspections, maintenance, replacements, adjustments, and repairs of the detection means and related circuits for traction-loss, broken-suspension-member, residual-strength.

(c) The MCP shall be updated when the components listed in the MCP have been revised.

(3) On-site documentation for conveyances installed or altered after January 1, 2008, shall comply with the currently adopted edition of ASME A17.1 as follows:

(a) The on-site documentation shall be:

(i) Kept on-site in the machine or control room, or machinery or control space.

(ii) Presented in hard-copy or electronic form. The conveyance contractor or conveyance owner shall ensure that the mode of presentation is viewable by conveyance contractors, mechanics, inspectors, and the Administrator at all times.

(b) On-site documentation shall include:

(i) Up-to-date wiring detailing circuits of all electrical protective devices.

(ii) Procedures for all inspections and tests.

(iii) Written checkout procedures.

(iv) Written evacuation procedures by authorized emergency personnel.

(v) Written procedures for cleaning cars and hoistway that have transparent enclosures.

(4) MCP Maintenance records shall document compliance with the currently adopted edition of ASME A17.1 and shall comply with the following:

(a) The MCP maintenance records shall be:

(i) Kept on-site in the machine or control room, or machinery or control space.

(ii) Presented in hard-copy or electronic form. The conveyance contractor or conveyance owner shall ensure that the mode of presentation is viewable by conveyance contractors, mechanics, inspectors, and the Administrator at all times.

(b) Maintenance records and shall include the following items.

(a) Description of maintenance tasks performed, including dates of service.

(b) Description and dates of examinations, tests, adjustments, repairs and replacements.

(c) Description and dates of all call backs (trouble calls) or reports that are reported to elevator personnel by any means, including corrective action taken.

(div) Written record of the findings on the firefighter's service operation.

~~(6) Maintenance records shall be made available to the Administrator, an Approved AHJ, an AHJ, or elevator personnel upon request.~~

(5) Conveyances listed in ASME A18.1 shall comply with the following requirements by July 1, 2015: [The MCP, onsite documentation and maintenance records pertaining to ASME A18.1 lifts must include basic information as applicable to the equipment and be kept on-site]

(a) An MCP for each conveyance shall be provided by the contractor responsible for maintenance, presented in hard-copy or electronic form, and located on-site. The conveyance contractor or conveyance owner shall ensure that the mode of presentation is viewable by conveyance contractors, mechanics, inspectors. The MCP shall include applicable items as listed in subsection (2)(b).

(c) Applicable documentation listed in subsection (3)(b) shall be kept on-site.

(d) Applicable MCP maintenance records listed in subsection (4)(b) shall be kept on-site.

## **Section 2-4 Alteration, and New Installation**

### **Section 2-4-1 Alteration**

(1) The conveyance owner or conveyance contractor who intends to complete an alteration on an existing conveyance shall submit a permit application and fees to the Administrator at least thirty (30) days prior to commencing construction. The permit application shall include the following items.

(a) A completed permit application on the form provided on the Administrator's website.

~~(b) One set of specifications and accurately sealed and fully dimensioned construction plans. These plans shall include the applicable code edition which shall conform to the edition of the code currently adopted by the Administrator or Approved AHJ, and shall include specifications of interior cab materials or indication on the plans that interior cab work is to be completed by others.~~

~~(e) Fee payment according to the fees in Section 2-3-1(10) of \$150 per conveyance.~~

(2) Prior to the alteration of the conveyance, the construction plans permit application shall be reviewed and documentation approved by the Administrator. If all documentation in Section 2-4-1(1) is not complete and accurate, the application will not be approved and the applicant will be notified of the deficiencies. If approved, the permit issued by the Administrator shall be displayed in the conveyance control room or control space associated with the permitted conveyance.

(3) Alteration activities shall commence within one hundred and eighty (180) days from the date of issuance of the permit from the office of the Administrator.

(4) Alteration activities regarding elevators which require a permit application to be submitted to the Administrator are items listed in ASME A17.1 and include the following:

(a) Minor Alteration Types

(i) Addition of power operation to door systems.

- (ii) Changes to the guide rails, supports, or fastenings.
- (iii) Changes to car or counterweight buffers ~~where the load rating has been altered.~~
- (iv) Increase or decrease of the dead weight of the car that is sufficient to increase or decrease the sum of the dead weight and rated load, as originally installed, by more than 5%. Where this alteration increases the original building design reactions by more than 5%, the permit application shall also include documentation that the adequacy of the affected building structure has been verified by a licensed professional engineer.
- (v) Installation of new car or counterweight safeties or alteration to existing safeties. If new car safeties are added to an existing conveyance, the permit application shall also include documentation that the adequacy of the affected building structure, guide rails, supports, and fastenings have been verified by a licensed professional engineer.
- (vi) Installation, ~~(not to include a "other than Replacement," as defined in these regulations)~~ or alteration to a speed governor.
- (vii) Alteration to the terminal stopping device.
- (viii) Alteration to the standby or emergency power system.
- (ix) Alteration to firefighters' emergency operation.
- (x) Addition of a hoistway entrance.
- (xi) Controller replacement for a hoistway door, car door, or car gate.
- (xii) Increase in working pressure by more than 5%.
- (xiii) Change to or replacement of a plunger or cylinder (to include the installation of a plunger gripper).
- (xiv) Replacement of an existing control valve with a valve of another type.
- (xv) Replacement of a hydraulic tank.
- (xvi) Replacement of a hydraulic tank and valve (power unit).
- (xvii) Any work within a cab other than that specified in section 2-4-1-1 (1).

(b) Major Alteration Types

- (i) Increase of rated load.
- (ii) Installation or alteration to driving machine, driving machine brake or driving machine sheaves. This includes moving a driving machine.
- (iii) Increase to the rated speed.

- (iv) Increase or decrease in rise.
- (v) Change in the type of service of an elevator.
- (vi) Changes in a freight elevator to allow passengers.
- (vii) Installation or replacement of the controller.
- (viii) Change in type of motion or operation control.
- (ix) Any alteration to a dumbwaiter, material lift or platform lift.

(5) Alteration activities regarding escalators and moving walks which require a permit application and processing fee of \$150 per conveyance to be submitted to the Administrator are listed below.

(a) Minor Alteration Types

- (i) Installation of skirt deflector device. Step/Skirt Indexing testing is required to be performed if the test indicated that the escalator was out of conformance if a skirt deflector had been installed.
- (ii) Alteration to handrails or handrail system.
- (iii) Alterations that involve the trusses, girders or supporting structures.
- (iv) Any alteration to or addition of operating and/or safety devices.
- (v) Alteration to or addition to lighting, access or electrical work.
- (vi) Alteration to entrance or egress.

(b) Major Alteration Types

- (i) Change in angle of inclination or geometry of balustrades.
- (ii) Alteration to step system or treadway system.
- (iii) Alteration to the step wheel tracks or track system.
- (iv) Changes in rated load or speed.
- (v) Installation or replacement of the controller.

(6) The Administrator or Approved AHJ may allow a conveyance contractor to perform emergency work on a conveyance that normally requires a permit if the alteration activity is as defined in ~~complies with~~ Section 1-4(8) Emergency Alteration.

(7) Following ~~the any~~ alteration of a conveyance, where a permit is required from the Administrator or the Approved AHJ according to Section 2-4-1, the conveyance owner shall arrange for an Acceptance Test and Inspection of the conveyance in accordance with Section ~~2-3-22-2-1(a) or~~

~~Section 2-2-1(b), if applicable. The responsibility for hiring a conveyance inspector to conduct Acceptance and Periodic Inspections resides with the conveyance owner.~~ The conveyance owner may ~~arrange for the inspection(s) by authorizing~~ authorize a general contractor or conveyance contractor to select, contract with, or hire a conveyance inspector who is not affiliated with the conveyance owner, general contractor, or conveyance contractor. The acceptance inspection ~~process~~ and issuance of a Certificate of Operation shall be processed by the Administrator in accordance with Section 2-3-1.

### **Section 2-4-1-1 Elevator Cab Interiors**

- (1) A conveyance owner may conduct the following type of repair work within the interior of an elevator cab without notification to or obtaining a permit from the Administrator.
  - (a) Change light lamps, not to include replacement of the luminaire (fixture).
  - (b) Repair or Refinish existing materials.
- (2) A conveyance owner or a licensed conveyance contractor shall first obtain a permit from the Administrator as described in Section 2-4-1 for work within an elevator cab that involves the installation or alteration of cab components. A licensed conveyance mechanic shall conduct this work or direct the execution of this work completed by a conveyance helper or apprentice to ensure the safety of the conveyance.

### **Section 2-4-2 New Installation**

- (1) The Conveyance Owner or Conveyance Contractor who intends to install a conveyance shall submit a permit application and fees to the Administrator at least thirty (30) days prior to commencing construction. The permit application will include the following:
  - (a) A completed permit application on the form provided on the Administrator's website.
  - ~~(b) One set of specifications and accurately scaled and fully dimensioned construction plans. These plans shall include the applicable code edition which shall conform to the edition of the code currently adopted by the Administrator or Approved AHJ, and shall include specifications of interior cab materials or indication on the plans that interior cab work is to be completed by others.~~
  - ~~(c) Fee payment according to the fees in Section 2-3-1(10) of \$300 per conveyance.~~
- (2) Prior to the installation of the conveyance, the construction plans permit application shall be reviewed and documentation approved by the Administrator. If all documentation in Section 2-4-2(1) is not complete and accurate, the application will not be approved and the applicant will be notified of the deficiencies. If approved, the permit issued by the Administrator shall be displayed in the conveyance control room or control space associated with the permitted conveyance.
- (3) Installation activities shall commence within one (1) year from the date of receipt of the permit application at the office of the Administrator.

- (4) Following the installation, where a permit is required from the Administrator or Approved AHJ according to Section 2-4-2, the conveyance owner shall arrange for an Acceptance Test and Inspection of the conveyance in accordance with Section 2-3-22-2-1(a) or Section 2-2-1(b), if applicable. ~~The responsibility for hiring a conveyance inspector to conduct Acceptance and Periodic Inspections resides with the conveyance owner.~~ The conveyance owner may arrange for the inspection(s) by authorizing/authorize a general contractor or conveyance contractor to select, contract with, or hire a conveyance inspector who is not affiliated with the conveyance owner, general contractor, or conveyance contractor. The acceptance inspection ~~process~~ and issuance of a Certificate of Operation shall be processed by the Administrator in accordance with Section 2-3-1.
- (5) After January 1, 2008, the Administrator shall not allow the installation of a Private Residence Conveyance in any commercial setting where the public or multiple private residences have access to the conveyance. [MOVED FROM 2-8 (2)]

### **Section 2-122-4-3 Alternate Materials and Methods Request** [entire section MOVED FROM 2-12]

- (1) The Administrator or Approved AHJ may grant the use of alternate materials and methods on a case-specific basis, for the implementation requirements of the adopted codes or standards listed in Section 2-2.
- (2) Requests for the use of alternate materials and methods where a conveyance is not located within the area of an Approved AHJ shall be submitted to the Administrator and be completed on the alternate materials and methods request form provided on the Administrator's website. This request will not be reviewed unless the appropriate form and required documentation are complete.
- (3) A submitted Alternate Materials and Methods Request shall not relieve a person from complying with the applicable standards adopted in these regulations unless the Administrator or the Approved AHJ expressly approve the use of alternate materials and methods.

### **Section 2-5 Automated People Movers**

- (1) The conveyance contractor who intends to install an APM or perform an APM alteration shall conform to Section 2-4-1 or 2-4-2.
- (2) The conveyance owner or managing agent where the APM system is located shall arrange for inspection of verification testing of the installed or altered APM system by a conveyance inspector and shall submit the following items to the Administrator.
- (a) Report documenting System Verification completed at the factory.
  - (b) Report documenting on-site System Verification.
  - (c) Certificate of Substantial Completion.
- (3) A conveyance inspector shall witness the testing of the APM system as defined in ASCE 21 Part 4 Section 16.2 (Annual Internal Audit Responsibilities) on an annual frequency. The results of the testing shall be submitted to the Administrator.



- (4) Following the Administrator's determination that the documentation listed in (2) or (3) of this Section indicates that the conveyance conforms to standards listed in Section 2-2-1(d), the Administrator will issue the Certificate of Operation for the APM system.

## **Section 2-6 Accident Reporting**

- (1) Any accident involving a conveyance that caused or could have caused injury to a person should be investigated by the conveyance owner or managing agent to determine if maintenance or repairs are needed to ensure proper operation of the conveyance and that the conveyance is in compliance with these regulations.
- (2) Following any accident involving a conveyance that causes injury to any person, the conveyance owner or managing agent shall.
- (a) Conduct a preliminary investigation to determine whether the accident was the result of a component of the conveyance that malfunctioned or was not in compliance with these regulations.
  - (b) Report this information to the Administrator or Approved AHJ via a phone call, email or facsimile within 24 hours of the accident. This report shall include the following items.
    - (i) Caller's first and last name, phone number, and organization.
    - (ii) Accident location with conveyance description, facility name, facility address, and conveyance registration number assigned by the Administrator.
    - (iii) Description of the accident and the preliminary determination of whether the accident was a result of a component of the conveyance that malfunctioned or is not in compliance with these regulations.
- (3) Based on results of the preliminary accident investigation, the following activities shall be conducted.
- (a) If the accident is not the result of the malfunction of a component of the conveyance and the conveyance is in compliance with these regulations, the conveyance owner may make the conveyance accessible to the public.
  - (b) If the accident is the result of a component of the conveyance that malfunctioned or is not in compliance with these regulations, the Administrator or Approved AHJ will suspend or revoke the Certificate of Operation for the conveyance and the conveyance owner shall complete the following.
    - (i) Immediately shut down the conveyance and arrange for an inspection of the conveyance to verify the cause of the accident prior to a conveyance contractor performing any modifications or repairs to the conveyance.
    - (ii) Arrange for a full Inspection of the conveyance following any modifications or repairs.
    - (iii) Complete and submit to the Administrator or Approved AHJ an accident investigation report, using the form that is provided on the Administrator's website, within ~~72 hours~~30 days of the accident or as approved by the Administrator. This report shall include a description of the actions taken to investigate the cause of the



accident, corrective actions taken to repair and test the performance of the conveyance and any inspection reports.

- (iv) The conveyance shall not be made accessible to the public without a current Certificate of Operation issued by the Administrator or Approved AHJ.

(4) Following the review of the preliminary investigation information in (2) of this Section, the Administrator or Approved AHJ will notify the conveyance owner or conveyance contractor if the Certificate of Operation will be suspended or revoked and activities listed in (3)(b) of this Section are to be completed.

(5) When the Approved AHJ becomes aware of an accident associated with a conveyance, the Approved AHJ will immediately report this accident to the Administrator.

## **Section 2-7 Implementation of Adopted Standards for Existing Conveyances**

(1) All conveyances installed prior to July 1, 2008 are exempt from complying with currently adopted edition of ASME A17.3—~~2005~~ unless one of the following conditions exists:

- (a) Substantial Alteration of a conveyance, or
- (b) An elevator presents a Material Risk.

Any alteration caused by the conditions listed above shall conform to the currently adopted edition of ASME A17.1—~~2007~~.

(2) Material Risk related to Firefighters' Service is present except if any of the following conditions apply:

- (a) The elevator complies with ASME A17.1 - 1981 Rules 211.1 and 211.3, or
- (b) The elevator travels less than 75 feet above or below the emergency personnel access, or
- (c) The building is equipped with an automatic sprinkling system according to the NFPA 13

Any elevator that does not meet one or more of the conditions listed above shall comply with Firefighters' Service requirements as described in the currently adopted version of ASME A17.1 by January 1, 2015. An AHJ may require and may enforce more stringent standards than these minimum requirements regarding Firefighters' Service, including full compliance with ASME A17.3. Contact the AHJ for local requirements and enforcement.

(3) Regarding Door Restrictors, the following shall apply.

- (a) Door Restrictors shall be installed and operational on all elevators installed on or after January 1, 1990.
- (b) Where there is evidence that door restrictors have been previously installed and not properly maintained, regardless of original installation date, the door restrictors shall be repaired to operate as intended.

(c) Door restrictors shall be installed in accordance with ASME A17.1-2013, Section 2.14.5.7 where an alteration permit is issued that includes a change in the type of Motion Control or Operation Control.

(ed) Following review of additional information regarding door restrictors, the Administrator will determine whether door restrictors shall be required on elevators installed prior to January 1, 1990.

(4) The Administrator will allow continued operation of a Hydraulic Elevator that has a hydraulic cylinder buried in the ground and is not provided with a safety bulkhead (typically installed prior to 1973) after January 1, 2012 if the conveyance owner completes one of the following actions in conformance with ASME A17.3 – 2005.

(a) The hydraulic cylinder shall be provided with a safety bulkhead, or

(b) The elevator shall be provided with car safeties ~~conforming to ASME A17.1 Section 3.17.1, and,~~ guide rails, guide-rail supports, and fastenings conforming to the currently adopted edition of ASME A17.1-Section 3.23.1, or

(c) The elevator shall be provided with a plunger gripper that shall grip the plunger when the applicable maximum governor tripping speed is achieved.

The Administrator may approve an extension to the due date listed in this subsection until December 31, 2013.

(5) The Administrator will allow continued operation of a Private Residence Conveyance installed in any building other than in a single-family residence if the following conditions are met:

(a) The conveyance was installed prior to January 1, 2008.

(b) The conveyance is registered with the Administrator on a form that is provided on the Administrator's website.

(c) The conveyance shall conform to all alteration, and inspection requirements according to Article 2, and testing ~~requirements frequency as determined by the Administrator~~ listed in Section 2-3-2 (5).

(6) The Administrator will only require a code data plate, as required by ASME A17.1, on an existing conveyance if the conveyance was installed on or after July 1, 1997. For conveyances installed prior to July 1, 1997, the absence of a code data plate is not a violation of these regulations, the edition of ASME A17.1 that will be referenced for inspection purposes will be one of the following:

(a) The edition in effect, or adopted by a local jurisdiction, on the date of installation.

(b) The edition listed on an existing code data plate.

(7) The Administrator may allow deviations to specific code requirements for elevators located in law enforcement facilities, mental hospitals, or similar facilities, that are used to transport prisoners or other detainees. These elevators are still required to comply with inspections, testing and maintenance requirements of Section 2-3.

## **Section 2-8 Implementation of Adopted Standards in New Conveyances**

~~(1) The Administrator will not require that a sump pit or sump pump be installed in the hoistway pit of a new Hydraulic Elevator if:~~

~~(a) The total travel of the elevator is less than 25 feet, and~~

~~(b) The hoistway pit is less than 67 inches deep.~~

~~(2) After January 1, 2008, the Administrator shall not allow the installation of a Private Residence Conveyance in any commercial setting where the public or multiple private residences have access to the conveyance. [MOVED TO 2.4.2 (5)]~~

### **Section ~~2-92-8~~ Shut-down of a Dangerous Conveyance**

- (1) If a conveyance inspector determines that a conveyance poses imminent danger to passengers or inspection/maintenance personnel or equipment, the conveyance inspector shall immediately notify the Administrator or the Approved AHJ and the conveyance owner of the condition of the conveyance and shall follow the procedures of the Approved AHJ or as listed in policy on the Administrator's website to shut down the dangerous conveyance.
- (2) If a conveyance mechanic determines that a conveyance poses imminent danger to passengers or inspection/maintenance personnel, the conveyance mechanic shall notify his/her employing conveyance contractor. Upon this notification, the conveyance contractor shall immediately notify the Administrator or the Approved AHJ and the conveyance owner of the condition of the conveyance and follow the procedures of the Approved AHJ or as listed in policy on the Administrator's website to shut down the dangerous conveyance.
- (3) Any conveyance that has been shut down shall not be placed back into service without first obtaining approval from the Administrator or the Approved AHJ.
- (4) Upon shut-down of a conveyance, the conveyance owner shall have the necessary repairs completed within three (3) months from the date of shut-down or place the conveyance in either a Dormant or Removed from Service state.

### **Section ~~2-102-9~~ Dormant**

- (1) A conveyance is considered dormant based on the following conditions.
  - (a) The Traction (electric) elevator car is parked at the top of the hoistway and the counterweights are parked at the bottom of the hoistway or the hydraulic elevator is parked at the bottom of the hoistway.
    - (i) The hoistway doors are latched in the closed position; and
    - (ii) The fuses are removed from the main line disconnect (if applicable); and
    - (iii) The mainline disconnect is locked in the "off" position with a wire seal or a red tag provided by the Administrator is placed on the disconnect switch.
  - (b) Escalators/Moving Walks are considered dormant based on the following conditions.

(i) The mainline disconnect is locked in the "off" position with a wire seal or a red tag provided by the Administrator is placed on the disconnect switch; and

(ii) Entrances are permanently barricaded. Escalators that have been made dormant can not be used as a stairway.

(2) A conveyance inspector or Administrator shall verify the status of the conveyance as dormant, place a wire seal on the mainline disconnect switch, document the activities on an inspection report, submit the inspection report to the conveyance owner, who shall then submit the report to the Administrator without fee.

(23) A conveyance shall not be made dormant for more than five (5) years. At the end of five (5) years the conveyance owner shall obtain a valid certificate of operation or remove the conveyance from operation-service pursuant Section 2-442-10.

(4) To place a dormant conveyance back in service the following conditions shall be met.

(a) All applicable tests according to Section 2-3-2 must be current, or if the applicable testing schedule was not maintained during dormancy, the applicable Category 1 and Category 5 tests must be completed and witnessed by a conveyance inspector.

(b) If the applicable testing schedule was maintained, a conveyance inspector must perform a periodic inspection on the conveyance.

(a) If the conveyance has been dormant for six (6) months or less, all applicable tests are current, a conveyance inspector has performed a periodic inspection in accordance with Section 2-3-1 and all deficiencies have been corrected, the conveyance may obtain a valid certificate of operation from the Administrator or Approved AHJ.

(b) If the conveyance has been dormant for six (6) months or more, all periodic inspections and tests have been completed in accordance with Sections 2-3-1 and 2-3-2 and all deficiencies have been corrected, the conveyance may obtain a valid certificate of operation from the Administrator or Approved AHJ.

(c) Prior to conveyance operation, the conveyance owner must mitigate all violations identified on the inspection report and obtain a valid certificate of operation from the Administrator or Approved AHJ.

(ed) A temporary certificate of operation will not be issued when placing a dormant conveyance back in operation.

#### **Section 2-442-10 Removed From Service**

(1) A conveyance is removed from service per the following items ~~from as listed in the currently adopted edition of ASME A17.1-Section 8.11.1.4.~~

(a) Traction (electric) elevator, dumbwaiters and material lifts

- (i) Remove the power feed line from the mainline disconnect switch~~The mainline disconnect is locked in the "off" position with a wire seal or a red tag provided by the Administrator is placed on the disconnect switch;~~ and
- (ii) Suspension ropes are removed; and
- (iii) Car and counterweights are parked at the bottom of the hoistway; and
- (iv) The hoistway doors are permanently barricaded or sealed in the closed position on the hoistway side. The lowest landing hoistway door may be sealed on the lobby side.

(b) Hydraulic elevators

- (i) Remove the power feed line from the mainline disconnect switch~~The mainline disconnect is locked in the "off" position with a wire seal or a red tag provided by the Administrator is placed on the disconnect switch;~~ and
- (ii) The hydraulic elevator car is parked at the bottom of the hoistway; and
- (iii) If provided, suspension means are removed and counterweight is parked at the bottom of the hoistway; and
- (iv) Pressure piping has been disassembled and a section removed from the premises; and
- (v) The hoistway doors are permanently barricaded or sealed in the closed position on the hoistway side. The lowest landing hoistway door may be sealed on the lobby side.

(c) Escalators/Moving Walks

- (i) The mainline disconnect is locked in the "off" position with a wire seal or a red tag provided by the Administrator is placed on the disconnect switch; and
- (ii) Entrances are permanently barricaded. Escalators that have been removed from service can not be used as a stairway.

(2) A conveyance inspector shall verify the status of the conveyance as out of service, place a wire seal on the mainline disconnect switch, document the activities on an inspection report, submit the inspection report to the conveyance owner, who shall then submit the report to the Administrator without fee.

(23) If a conveyance owner has removed a conveyance from service and intends to place the conveyance back into operation, the conveyance shall conform to all of the provisions of the applicable standard listed in Section 2-2-1.

(4) All applicable tests must be performed and witnessed according to Section 2-3-2.

(5) Prior to conveyance operation, the conveyance owner must mitigate all violations identified on the inspection report and obtain a valid certificate of operation from the Administrator or Approved

AHJ. A temporary certificate of operation may not be issued when placing a out-of-service conveyance back in operation.

### **Section 2-11 Removal of Conveyance from Facility**

- (1) The conveyance owner must notify the Administrator when a conveyance is removed from the facility by completing the conveyance removal notification form provided on the Administrator's website.

### **Section 2-12 Alternate Materials and Methods Request**

**[MOVED TO 2-4-3]**

- ~~(1) The Administrator or Approved AHJ may grant the use of alternate materials and methods on a case-specific basis, for the implementation requirements of the adopted codes or standards listed in Section 2-2-1.~~
- ~~(2) Requests for the use of alternate materials and methods where a conveyance is not located within the area of an Approved AHJ shall be submitted to the Administrator and be completed on the alternate materials and methods request form provided on the Administrator's website. This request will not be reviewed unless the appropriate form and required documentation are complete.~~
- ~~(3) A submitted Alternate Materials and Methods Request shall not relieve a person from complying with the applicable standards adopted in these regulations unless the Administrator or the Approved AHJ expressly approve the use of alternate materials and methods.~~

## ARTICLE 3 AUTHORITY HAVING JURISDICTION

### Section 3-1 Authority Having Jurisdiction Requirements

- (1) ~~In lieu of the Administrator regulating activities as described in Section 2-2, a~~ municipality or county (an authority having jurisdiction), or any agent thereof, may enter into a memorandum of agreement (MOA) with the Administrator under which the Administrator may delegate to the AHJ ~~will operate a local program of the authority to regulate~~ conveyances ~~regulation of all conveyances located within~~ the territory of the AHJ, provided that the ~~AHJ local~~ program has standards that are equal to or ~~greater more stringent~~ than the minimum standards listed in Sections 2-2 through 2-11 of these adopted in these regulations. The Administrator will maintain regulation activities described in Sections 2-1 (Registration).
- (2) If an MOA as described above is executed, the AHJ will become an Approved AHJ and will be responsible for enforcing the applicable provisions of these regulations.
- (3) The Approved AHJ will submit to the Administrator general information regarding new or existing conveyances as determined by the Administrator and listed in the MOA. This information will be reported annually no later than January 31<sup>st</sup> following the previous twelve-month reporting period.
- (4) The Approved AHJ may set fees and collect or contract the collection of these fees to offset the cost of conducting activities described in Section 2-3 for conveyances located within the Approved AHJ territory. Fee amounts will be determined by the Approved AHJ or agreed upon by the Approved AHJ and the contracted inspection organization.
- (5) Inspections of public school conveyances in Approved AHJ territories shall be conducted by the Approved AHJ or, with prior consent of the Administrator or Approved AHJ, by a Conveyance Inspector contracted by the public school district. ~~The Certificate of Operation for a passing inspection will be issued by the Approved AHJ if the Approved AHJ conducts the inspection or by the Administrator if the inspection is conducted by a conveyance inspector hired by the public school district. The Approved AHJ shall notify the public school district in writing that the inspection may be conducted by a conveyance inspector for the public school district, and a copy of this notification shall immediately be submitted to the Administrator.~~

## ARTICLE 4 LICENSING

### Section 4-1 Licensing Qualifications

This section describes the requirements for the licensing of conveyance contractors, conveyance mechanics and conveyance inspectors. Each license allows the applicable licensee to perform installation, alteration, replacement, maintenance, removal, dismantling, or inspection activities of conveyances as identified in Section 1-5 and as listed on the license. The Administrator may request documentation in addition to that described in the following sections to verify the accuracy of information provided with a license application.

Licensing fees for Conveyance Mechanics, Temporary Mechanics, Contractors and Inspectors.

License Type	License Fee
Mechanic	\$125.00
Temporary Mechanic	\$25.00
Conveyance Contractor	\$500.00
Inspector	\$175.00
Replacement License	\$25.00

#### Section 4-1-1 Conveyance Mechanic

(1) The Administrator may issue a conveyance mechanic license to the applicant if the applicant has provided documentation required in this Section. The conveyance mechanic license will indicate the type of conveyance on which the licensee is allowed to conduct work per these regulations. The types of conveyance mechanic licenses are as follows.

(a) Type 1: All conveyances with the exception of APM, which would include elevators, escalators, ~~personnel hoists~~, moving walkways, platform lifts and dumbwaiters, as described in ASME A17.1 and A18.1.

(b) Type 2: Platform lifts only, as described in ASME A18.1.

(c) Type 3: APM as described in ASCE 21.

(d) Type 4: All conveyances listed in (1)(a) and (c) of this Section.

(e) Type 5: All conveyances listed in (1)(b) and (c) of this Section.

(2) A person applying for a conveyance mechanic license shall submit to the Administrator a completed conveyance mechanic license application using the form that is provided on the Administrator's



website, the license fee, listed in Section 4-1 and documentation that, as determined by the Administrator, indicates the applicant is qualified under one of the following scenarios.

- (a) The applicant submits documentation that proves that the applicant has successfully completed a conveyance mechanic training program. This program will be subject to audit by the Administrator. Evaluation criteria for Administrator audit may include, but is not limited to, review of course materials, required classroom and field hours, classroom activities, and test materials and procedures. Based on evaluation of the conveyance mechanic license training curriculum, the Administrator may set limitations on the license issued. To be approved, the training program shall:
  - (i) Be registered with the United States Department of Labor Office of Apprenticeship (USDOL) under specific apprentice occupation categories assigned by the USDOL to license types listed in (1) of this Section, and shall include classroom and field training according to the USDOL requirements on the actual equipment listed in the license types, or
  - (ii) Be approved by the Administrator. Applicants seeking licensure under programs approved solely by the Administrator shall submit to the Administrator an executed affidavit on a form that is provided by the Administrator and signed by the applicant which states that during the applicant's participation in the approved program, the applicant's work experience consisted of at least 1,700 hours per year performing activities listed in the work process schedule attached to the affidavit.
- (b) In lieu of qualifying pursuant to (2)(a) of this Section, the applicant may qualify if the applicant submits to the Administrator one of the following types of documentation.
  - (i) Documentation that the applicant holds a current and valid license from another state whose standards, as determined by the Administrator, meet or exceed those of these regulations. This documentation will consist of:
    - (A) A copy of the license;
    - (B) Contact name, phone number and the issuing department of the state in which the license was obtained.
  - (ii) Documentation that the applicant has obtained both of the following items.
    - (A) Three (3) years of work experience as a conveyance mechanic on non-residential conveyances without supervision. One (1) year of work experience will equal 1,700 hours. Documentation of work experience will consist of:
      - (I) A statement on the employer's letterhead and signed by the personnel Administrator or other person of authority affirming that the condition in (A) is true; and,
      - (II) Personnel records that indicate the timeframe and listing of hours for completion of the experience described in (A); or

- (III) An affidavit on a form that is provided by the Administrator and signed by the applicant which states that the work experience indicated in personnel records submitted consists of unsupervised mechanic activities listed in the work process schedule attached to the affidavit.
  - (B) A passing score on an examination provided by the Administrator, or a conveyance contractor thereof, on the codes and standards that relate to the type of conveyance mechanic license applied for, as described in (1) of this Section.
- (3) The Administrator may add to the issued license an exclusion for performing work on specific conveyance equipment if the applicant has not provided to the Administrator proof of adequate training on this equipment as included in one of the licensing application methods listed in (2) of this Section.
- (4) A person who obtains a conveyance mechanic license shall also complete eight (8) hours of continuing education that has been approved by the Administrator every two (2) years.
- (5) If a Type 1 or 4 licensee is approved to perform work on escalators and moving walkways, the required continuing education shall also include training on this equipment in order to continue to be qualified to perform work on this equipment.
- (6) Following review of the application, the Administrator will notify the applicant of the approval or disapproval of the application. If the applicant is approved, the notification will include the conveyance mechanic license number, the type of conveyance on which the conveyance mechanic may perform work, a license card, and a payment receipt. If the applicant is not approved, the notification will include a description of the deficiencies in the application.
- (7) The conveyance mechanic license issued by the Administrator shall be valid for one (1) year. The Administrator may renew a license, provided the applicant submits the following:
- (a) Completed conveyance mechanic license application form.
  - (b) License renewal fee, listed in Section 4-1; and
  - (c) Copy of certification indicating that the applicant completed continuing education required in this Section.

#### **Section 4-1-2 Emergency and Temporary Conveyance Mechanic**

- (1) When an emergency exists, as defined in § 9-5.5-108 (2) C.R.S., the Administrator may issue an emergency conveyance mechanic license. This license will be issued to a person who, based on the judgment of a conveyance contractor, has acceptable documented experience and education to perform work on specific types of conveyances identified in Section 1-5. Within five (5) business days after commencing work, the applicant will complete and submit the conveyance mechanic license application to the Administrator. There will be no license fee for an emergency conveyance mechanic license.
- (2) Upon notification to the Administrator from a conveyance contractor that there are no mechanics available to perform conveyance work, the Administrator may issue a temporary conveyance

mechanic license. This license will be issued to a person who is enrolled in and progressing through a mechanic training program as described in Section ~~3-1-14-1-1~~ (2), and based on the judgment of a conveyance contractor, has acceptable documented experience and education to perform work on specific types of conveyances identified in Section ~~3-1-1(1)4-1-1~~ (1). At least five(5) working days prior to commencing work, the conveyance contractor who will employ the temporary conveyance mechanic shall submit the following documentation to the Administrator.

- (a) A completed temporary conveyance mechanic license application on the form that is provided on the Administrator's website.
  - (b) The license fee, listed in Section 4-1.
- (3) Following review of the application, the Administrator will notify the conveyance contractor and temporary conveyance mechanic applicant of the approval or disapproval of the application. If the applicant is approved, the notification will include the temporary conveyance mechanic license number and the type of conveyance on which the temporary conveyance mechanic may perform work. If the applicant is not approved, the notification will describe the deficiencies in the application.
- (4) The emergency conveyance mechanic license will be valid for sixty (60) days and the temporary conveyance mechanic license will be valid for thirty (30) days. The Administrator may renew a temporary mechanic license, provided the conveyance contractor submits the license fee and notification to the Administrator that renewal is requested for a license issued the prior month. This documentation may include multiple license renewal requests for several conveyance mechanics.

### Section 4-1-3 Conveyance Contractor

- (1) The Administrator will consider issuing a conveyance contractor license to a company if the applicant submits to the Administrator a completed conveyance contractor license application form provided on the Administrator's website, the license fee, listed in Section 4-1 and:

(a) ~~Documentation that one of the following conditions exists:~~[this change reflects changes to statute in 2008 that were errantly left in regulation]

~~(i)~~ The applicant employs, at a minimum, one (1) conveyance mechanic licensed with the Administrator. The employment of temporary or emergency conveyance mechanics does not satisfy this requirement. This documentation shall consist of a statement on the employer's letterhead that is signed by the personnel ~~Administrator-administrator~~ or other person of authority affirming that this requirement has been met.

~~(ii) The applicant holds a current and valid license from another state whose standards are substantially similar to those of these regulations. This documentation will consist of:~~

~~(A) A copy of the license; and,~~

~~(B) The current contact name, phone number and the issuing department of the state in which the license was obtained.~~

- (b) A certificate of insurance, declaration page or insurance policy indicating that the applying company possesses insurance coverage according to § 9-5.5-115 (1) C.R.S.
- (2) The conveyance contractor license issued by the Administrator shall be valid for one (1) year. The Administrator may renew a license, provided the applicant submits the following.
  - (a) Completed conveyance contractor license application form.
  - (b) Documentation as described in 4-1-3(1)(i) of this Section.
  - (c) A certificate of insurance, declaration page or insurance policy indicating that the applying company possesses insurance coverage according to § 9-5.5-115 (1) C.R.S.
  - (d) License renewal fee, listed in Section 4-1.

#### **Section 4-1-4 Conveyance Inspector**

- (1) The Administrator may issue a conveyance inspector license to the applicant if the applicant has provided documentation required in this Section. The conveyance inspector license will indicate the type of conveyance for which the licensee is allowed to inspect per these regulations. The types of conveyance inspector licenses are as follows.
  - (a) Type 1: All conveyances with the exception of APM, which would include elevators, escalators, personnel hoists, moving walkways, platform lifts, stairway chairlifts and dumbwaiters, as described in ASME A17.1 and A18.1.
  - (b) Type 2: APM as defined in ASCE 21.
  - (c) Type 3: All conveyances listed in (a) and (b) of this Section.
- (2) A person applying for a conveyance inspector license shall submit to the Administrator a completed conveyance inspector license application using the form that is provided on the Administrator's website, the license fee, listed in Section 4-1 and documentation that, as determined by the Administrator, indicates that the applicant is qualified under one of the following scenarios.
  - (a) Private conveyance inspector.
    - (i) To obtain a Type 1 conveyance inspector license, the applicant shall submit to the Administrator documentation that, as determined by the Administrator, proves that:
      - (A) The applicant is certified to inspect conveyances by a nationally recognized conveyance association as determined by the Administrator, which will consist of a copy of the front and back of a current certification card from the issuing association; or

- (B) The applicant qualifies as Elevator Personnel as defined in ASME A17.1 and the applicant has been approved to take the certification exam offered by a nationally recognized conveyance association as determined by the Administrator. The applicant shall attend the first available exam offered by a nationally recognized conveyance association and obtain certification within 6 (six) months of licensure. If the applicant fails the exam, the Administrator may suspend the applicant's license until proof of certification is submitted to the Administrator.
  - (ii) To obtain a Type 2 conveyance inspector license, the applicant will submit to the Administrator documentation that, as determined by the Administrator, indicates that the applicant.
    - (A) Possesses a current Professional Engineer license, or
    - (B) Has, at a minimum, three (3) years of experience participating in APM inspections and audits.
- (b) AHJ Conveyance Inspector or AHJ-appointed Conveyance Inspector.
  - (i) To obtain a Type 1 conveyance inspector license, the applicant shall submit to the Administrator documentation that proves the applicant is certified to inspect conveyances by a nationally recognized conveyance association as determined by the Administrator, which will consist of a copy of the front and back of a current certification card from the issuing association; or
  - (ii) The applicant submits the following items to the Administrator.
    - (A) Documentation that the applicant intends to obtain certification within 1 (one) year from licensure, and
    - (B) Agrees to complete at least eight (8) weeks of conveyance inspection activities under the direct supervision of a conveyance inspector prior to conducting conveyance inspection activities without direct supervision. During this supervised period, the licensee shall be trained on the inspection of any type of conveyance which the licensee will encounter in the inspection territory. Documentation shall be submitted to and approved by the Administrator which indicates that the applicant has received the required supervision prior to conducting unsupervised conveyance inspection activities.
- (3) If a licensee qualifies by (2)(a)(i)(B) or (2)(b)(ii) of this Section and the licensee fails to obtain certification as required, the Administrator may suspend or revoke the licensee's conveyance inspector license.
- (4) Beginning January 1, 2014, all new and renewing applicants shall successfully pass a test that will be administered by the Administrator on these Regulations, Policies and Guidance Documents which are available on the Administrators website.
  - (a) A new applicant shall successfully pass the test administered by the Administrator before a license will be issued.

- (b) A current licensee renewing their conveyance license may take this test up to one hundred and eighty (180) days prior to the expiration date listed on the license issued by the Administrator.
  - (c) All applicants shall obtain a passing score of not less than 90% to receive a new or renewal license from the Administrator.
- (5) All applicants shall obtain a passing score of not less than 90% on these Regulations, Policies, and Guidance Documents administered by the Administrator every three (3) years.
- (6) Any private conveyance inspector or AHJ-appointed conveyance inspector applicant shall also submit to the Administrator a certificate of insurance or insurance policy indicating the applicant possesses insurance coverage according to § 9-5.5-115 (2) C.R.S.
- (7) An AHJ conveyance inspector applicant is exempt from the requirement to provide insurance, pursuant to § 9-5.5-115 (2) C.R.S., while performing Approved AHJ official duties.
- (8) If a licensee receives a Type 1 license and will be conducting inspection activities on escalators or moving walks, the licensee shall complete at least eight (8) hours of inspection training on this equipment prior to conducting unsupervised inspection activities on this equipment. This training shall consist of direct supervision under a conveyance inspector who has at least eight (8) hours of experience inspecting, installing or maintaining this type of equipment. This requirement shall not apply to a licensee who has received training on this type of equipment through an Administrator-approved training program.
- (9) The conveyance inspector license issued by the Administrator shall be valid for one (1) year. The Administrator may renew a license, provided the applicant submits the following.
- (a) Completed conveyance inspector license application form.
  - (b) Documentation that the applicant is certified by a nationally recognized conveyance association.
  - (c) A certificate of insurance, declaration page or insurance policy indicating that the applicant possesses insurance coverage according to § 9-5.5-115 (2) C.R.S.
  - (c) License renewal fee, listed in Section 4-1.

## **ARTICLE 5 ENFORCEMENT**

### **Section 5-1 Enforcement Program**

The Administrator provides these regulations to assist the regulated community with maintaining safe and proper operation of regulated conveyances. When a regulated conveyance or licensed conveyance mechanic, contractor or inspector is found to be out of compliance with these regulations, the Administrator will pursue enforcement actions against the regulated party. The enforcement process will include requiring the regulated party to make repairs and/or upgrades, perform system tests, keep records, maintain current licenses, and other actions to bring the conveyance or licensee back into compliance. During and following the enforcement process, the Administrator will continue to assist the regulated party to remain in compliance. The enforcement process may include monetary penalties up to one thousand dollars (\$1,000) per conveyance per day of violation according to statute §8-20-104 C.R.S. if the enforcement obligations are not implemented according to the required schedule.

#### **Section 5-1-1 Notice of Violation**

- (1) A Notice of Violation (NOV) may be issued when a conveyance is found to be out of compliance with these regulations and/or statutes §8-20 and 9-5.5 C.R.S. A NOV may also be issued if the licensed contractor, mechanic or inspector has violated any part of these regulations or any applicable statutes.
- (2) Within ten (10) working days after an NOV has been issued, the person issued the NOV may file a written request with the Administrator for an informal conference regarding the NOV. If the person issued the NOV does not request an informal conference within this time-frame, all provisions of the NOV shall become final and not subject to further discussion. If the NOV is not resolved within the prescribed time frame, the Administrator may then seek judicial enforcement of the NOV, or an Enforcement Order may be issued.

#### **Section 5-1-2 Enforcement Order**

- (1) An Enforcement Order may be issued when the violations included within an NOV are not resolved within the prescribed time frame. The Enforcement Order may include increased fines up to one thousand dollars (\$1,000.00) per conveyance for each day of violation. In addition, the Enforcement Order may include shut-down of the conveyance, and suspension and/or revocation of a conveyance license.
- (2) Within ten (10) working days after an Enforcement Order has been issued, the owner/operator may file a written request with the Executive Director for an informal conference regarding the Enforcement Order. If the owner/operator does not request an informal conference within this time-frame, all provisions of the Enforcement Order shall become final and not subject to further discussion. If the Enforcement Order is not resolved within the prescribed time frame, the Administrator may then seek judicial enforcement of the Enforcement Order.

#### **Section 5-1-3 Informal Conference**

- (1) Upon receipt of the request, the Administrator shall provide the owner/operator with notice of the date, time and place of the informal conference. The Administrator shall preside at the informal conference, during which the owner/operator and Division personnel may present information and arguments regarding the allegations and requirements of the NOV or the Enforcement Order.

- (2) Within twenty (20) days after the informal conference, the Administrator shall issue a Settlement Agreement in which the violations from the NOV and/or Enforcement Order will be upheld, modified or stricken. The Settlement Agreement will include a schedule of required activity for resolution of the violations. If the terms and/or schedule in the Settlement Agreement are not satisfied, either an Enforcement Order will be issued, re-issued, or the Administrator may seek judicial enforcement.

#### **Section 5-1-4 License Review Board**

The Administrator shall establish a License Review Board that shall consist of members of the Conveyance Advisory Board. This Board will make recommendations to the Administrator on matters concerning suspension or revocation of conveyance licenses.



## Notice of Rulemaking Hearing

**Tracking number**

2014-00899

**Department**

500,1008,2500 - Department of Human Services

**Agency**

2503 - Income Maintenance (Volume 3)

**CCR number**

9 CCR 2503-7

**Rule title**

OTHER ASSISTANCE PROGRAMS

### Rulemaking Hearing

**Date**

10/03/2014

**Time**

10:00 AM

**Location**

Colorado Department of Human Services, Conference Room 4A/B, 1575 Sherman Street, Denver, CO 80203

**Subjects and issues involved**

#14-5-1-1: 2014-2015 Low-Income Energy Assistance Program (LEAP) Update

**Statutory authority**

26-1-107; 26-1-109; 26-1-111; 26-2-122.5, 40-8.7-109; 40-8.7-112(1), C.R.S. (2013)

### Contact information

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**Title**

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Title of Proposed Rule: 2014-2015 Low-Income Energy Assistance Program (LEAP) Update

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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.)*

The Low-Income Energy Assistance Program (LEAP) is reviewed annually for updates that might be needed for the next period, effective November 1<sup>st</sup>. There are four main purposes for this rule change:

1. To copy rules from the general eligibility rule sections 3.100 (9 CCR 2503-1) and 3.200 (9 CCR 2503-2), and only those rules that apply to LEAP or that are currently referenced within LEAP program rules. Those rules that will be copied will be copied verbatim, except that they may exclude those sections that do not apply to LEAP or they were already excluded in LEAP rule by reference, those with exclusions will be indicated in the summary table below. This is due to the intent to repeal 3.100 and 3.200 at a later date.
2. To add a rule that requires the county departments of social/human services to conduct case file reviews and submit documentation to the State LEAP office as recommended by the Office of the State Auditor, based on 2012-2013 LEAP audit findings.
3. To revise, clarify and update the income guidelines and flat rates for benefit calculation.
4. To clarify appropriate use of the Electronic Benefits Transfer (EBT) for recipients of Low-Income Energy Assistance Program (LEAP) cash benefits. The rule also specifies restricted use and consequences for 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.

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An emergency rule-making (which waives the initial Administrative Procedure Act noticing requirements) is necessary:

<input type="checkbox"/>
<input type="checkbox"/>

to comply with state/federal law and/or

to preserve public health, safety and welfare

Explain:

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Initial Review 09/05/2014

Proposed Effective Date 12/01/2014

Final Adoption 10/03/2014

EMERGENCY Adoption N/A

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## **DOCUMENT 2**

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[Note: "Strikethrough" indicates deletion from existing rules and "all caps" indicates addition of new rules.]

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**STATEMENT OF BASIS AND PURPOSE** (continued)

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Authority for Rule:

**State Board Authority:** 26-1-107, C.R.S. (2013) - State Board to promulgate rules; 26-1-109, C.R.S. (2013) - State Board rules to coordinate with federal programs; 26-1-111, C.R.S. (2013) – State Board 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)*

26-2-122.5 C.R.S. (2013) - Colorado Department of Human Services is authorized to accept available moneys, including those for LEAP;

40-8.7-109, C.R.S. (2013) - LEAP eligibility for qualified individuals by CDHS;

40-8.7-112(1), C.R.S. (2013) – Low Income Energy Assistance fund administered by CDHS.

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Does the rule incorporate material by reference?

<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No
<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No

Does this rule repeat language found in statute?

If yes, please explain.

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*State Board Administration will send this rule-making package to Colorado Counties, Inc., Office of State Planning and Budgeting, and the Joint Budget Committee. The program has sent this proposed rule-making package to which stakeholders?*

Colorado Legal Services, Policy Advisory Committee (PAC), Economic Security Sub-PAC, Energy Outreach Colorado (EOC), Colorado Energy Office (CEO), Governor's Commission on Low Income Energy Assistance, Colorado Cross-Disability Coalition, Colorado Rural Electric Association, County LEAP managers, County Human Services Directors Association

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Attachments:

Regulatory Analysis

Overview of Proposed Rule

Stakeholder Comment Summary

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## **REGULATORY ANALYSIS**

*(Complete each question; answers may take more than the space provided)*

### **1. List of groups impacted by this rule:**

*Which groups of persons will benefit, bear the burdens or be adversely impacted by this rule?*

The State LEAP unit, counties, and clients will be positively impacted by centralizing all the rules pertaining to LEAP into one section. It also provides clarification of existing language and codifies best practices in rule.

### **2. Describe the qualitative and quantitative impact:**

*How will this rule-making impact those groups listed above? How many people will be impacted? What are the short-term and long-term consequences of this rule?*

All LEAP eligibility information will be available to counties, clients, and the public within one section in the rule. This will eliminate the need for clients to search for the information in different sections and will facilitate training within the counties.

Clarification of existing language assures better direction for counties and improves efficiency in eligibility determination and timeliness in case processing, which positively impacts LEAP clients.

### **3. Fiscal Impact:**

*For each of the categories listed below explain the distribution of dollars; please identify the costs, revenues, matches or any changes in the distribution of funds even if such change has a total zero effect for any entity that falls within the category. If this rule-making requires one of the categories listed below to devote resources without receiving additional funding, please explain why the rule-making is required and what consultation has occurred with those who will need to devote resources.*

State Fiscal Impact *(Identify all state agencies with a fiscal impact, including any Colorado Benefits Management System (CBMS) change request costs required to implement this rule change)*

None

County Fiscal Impact

None

Federal Fiscal Impact

The U.S. Department of Health and Human Services primarily funds LEAP.

Other Fiscal Impact *(such as providers, local governments, etc.)*

None

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### **REGULATORY ANALYSIS** (continued)

#### **4. Data Description:**

*List and explain any data, such as studies, federal announcements, or questionnaires, which were relied upon when developing this rule?*

U.S. Health and Human Services 2014 Poverty Guidelines were used to set income maximums at one hundred fifty percent 150% of Federal Poverty Level (FPL). For example, the maximum annual income for a household size of four (4) at 150% FPL is \$35,775 according to the Federal Poverty Guidelines. The amount is divided by twelve (12) months and rounded up to the nearest dollar; therefore, the maximum monthly gross income for a household size of four is \$2,982. LEAP uses a monthly gross income amount to determine income eligibility.

Flat rate and standard amount when heat is included in rent figures are based on the average of the actual home heating costs from the prior heating season as recorded in the LEAP automated computer system.

#### **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 because the proposed rule change is the only method available to revise current rules.

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## **OVERVIEW OF PROPOSED RULE**

Compare and/or contrast the content of the current regulation and the proposed change.

<u>Section Numbers</u>	<u>Current Regulation</u>	<u>Proposed Change</u>	<u>Stakeholder Comment</u>			
3.750.11, 3.750.12, 3.751.1, 3.751.31, 3.751.41, 3.751.42, 3.751.43, 3.751.51, 3.751.53, 3.751.71, 3.751.72, 3.752, 3.756.11, 3.756.2, 3.758.31, 3.758.32, 3.758.41, 3.758.46, 3.758.47, 3.758.47 Step D, 3.758.47 Step F, 3.759.11.	The program is described as: "Basic Program"	Changes the description to: "Heating Fuel Assistance Program"	<u>  X  </u>	Yes	<u>  —  </u>	No
3.750.13	None	Adds the intent of the Crisis Intervention Program.	<u>  —  </u>	Yes	<u>  X  </u>	No
3.751.1	Definition of "Application Period for the Purpose of Income Verification"	Changes the title to "Income Verification Period", but maintains the definition.	<u>  X  </u>	Yes	<u>  —  </u>	No
3.751.1	Definitions	Adds the definition of "Approved Vendor".	<u>  X  </u>	Yes	<u>  —  </u>	No
3.751.1	Definition of "Completed Application"	Changes the section reference from 3.140.11 to 3.753.	<u>  —  </u>	Yes	<u>  X  </u>	No
3.751.1	Definition of "Estimated Home Heating Costs"	Adds "(EHHC)" to the title of the definition and adds the following sentence to the definition: "An EHHC can only be obtained from approved vendors, for all other vendors use flat rates. This sentence adds to rule what has been best practice.	<u>  =  </u>	Yes	<u>  X  </u>	No

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3.751.1	Definitions	Adds the definition of "Life Threatening Crisis" as requested by the federal auditors.	<u>X</u>	Yes	<u>  </u>	No
3.751.1	Definitions of "Household"	Deletes the details leaving only the general definition of household and adding the reference to section 3.751.2.	<u>  </u>	Yes	<u>X</u>	No
3.751.1	Definitions	Adds the definition "Propane Bottles" to differentiate them from propane as a bulk fuel, and adds a definition for "Report of Contact (ROC)" to clarify to the counties what the State means when using the term	<u>X</u>	Yes	<u>  </u>	No
3.751.2	None	Adds descriptions and clarifications of households that were previously under the definition of household.	<u>  </u>	Yes	<u>X</u>	No
3.751.21	Permanent Separation	Copies 3.210.23 to add it under the LEAP section as 3.751.21.	<u>X</u>	Yes	<u>  </u>	No
3.751.22	Presumption of Marriage	Copies 3.210.24 to add it under the LEAP section as 3.751.22.	<u>X</u>	Yes	<u>  </u>	No
3.751.35	Authorized Representative	Replaces 3.751.35 which is a duplicate rule with a new rule titled "Signature by Mark". This rule allows illiterate or partially illiterate clients to use a mark as signature provided there is a witness.	<u>  </u>	Yes	<u>X</u>	No
3.751.44	None	Adds language on the appropriate use of the EBT.	<u>X</u>	Yes	<u>  </u>	No

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3.751.64	None	Adds a rule about county case file reviews as recommended by the Office of the State Auditor as a result of the 2012-2013 LEAP audit finding. The title of the rule is "County Case File Review".	<u>X</u>	Yes	—	No
3.752.21	Program Eligibility Requirements  The program is described as: "Basic Program"	Changes the description to: "Heating Fuel Assistance Program" and deletes the reference number 3.752.21, which places program eligibility requirements under 3.752.2.	<u>X</u>	Yes	—	No
3.752.21	Countable Unearned Income	Copies 3.250.23 to add it under the LEAP section as 3.752.21 with some modifications to account for the exclusions that already existed in the LEAP rules.	<u>X</u>	Yes	—	No
3.752.211	Periodic Payments	Copies 3.250.25 to add it under the LEAP section as 3.752.211.	<u>X</u>	Yes	—	No
3.752.212	Military Allotment	Copies 3.250.27 to add it under the LEAP section as 3.752.212. Only the first part of this rule was copied since LEAP counts all income received by the applicant's household.	—	Yes	<u>X</u>	No
3.752.22 A	Income and Household Size Criteria	Adds the treatment of unearned income to clarify its use to prevent errors found during State LEAP county reviews. It moves the subsequent letters to accommodate the new "A" and deletes the old "D" section.	—	Yes	<u>X</u>	No



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3.752.22 C,3	Income and Household Size Criteria	Deletes the former name of the definition and its reference and replaces it with the new name. The following sentence was replaced “for the application period (3.751.1 “Application Period for the Purpose of Income Verification”)” for “in the income verification period”	<u>—</u>	Yes	<u>X</u>	No
3.752.22 D	Income and Household Size Criteria	Changes the description from “Basic Program” to “Heating Fuel Assistance Program” and updates the Monthly Gross Income table to match the current poverty level in accordance with Federal Department of Health and Human Services.	<u>—</u>	Yes	<u>X</u>	No
3.752.23	Income Exclusions	Copies parts of section 3.200.41 to add it under the corresponding LEAP section as 3.752.23 with some modifications to account for the exclusions that already existed in the LEAP rules and deleting references no longer needed. It also adjusts the lettering within the rule.	X	Yes	<u>—</u>	No
3.752.25 A	Vulnerability	Clarifies the definition of vulnerability by deleting “affected by the rising” and replacing it with “responsible for the”	<u>—</u>	Yes	<u>X</u>	No

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3.752.25 B	Vulnerability	Changes the description of the program to: "Heating Fuel Assistance Program" and adds two new non-eligible dwellings: commercial properties and hotels; unless they meet certain requirements. The two statements under B 6 will move under the new B 8.	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No
3.752.26	Residency Requirements	Transfers this rule under the new section "Residence" with the number 3.753.22.	<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No
3.752.27	Citizenship – Lawful Presence Requirements	Transfers this rule under the new section "General Requirements for Citizenship and Lawful Presence" with the number 3.753.18.	<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No
3.752.29	None	Adds the rules "Mandatory Crisis Intervention Program Inspection". This is a health and safety inspection conducted by the State contractor to ensure that vendors that perform a Crisis Intervention Program service did a proper job.	<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No
3.753-3.753.17	General Requirements for Citizenship and Lawful Presence	Copies 3.140-3.140.18 to add it under the LEAP section as 3.753-3.753.17 with some modifications to account for the exclusions that already existed in the LEAP rules under 3.752.27, and the part of the rule that exempted LEAP from some of the requirements that other programs needed to follow (see 3.140.12 C and D 14). Only those that apply to LEAP were copied.	<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No

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3.753.18	Citizenship – Lawful Presence Requirements	Transfers this rule from 3.752.27.	<u>    </u>	Yes	<u>X</u>	No
3.753.19	None	Creates a rule that allows the counties to use Verification systems approved for use by the Department of Revenue.	<u>    </u>	Yes	<u>X</u>	No
3.753.2	None	Creates the title “Residence” to accommodate the move of a general rule.	<u>    </u>	Yes	<u>X</u>	No
3.753.21	Colorado Residency	Copies 3.140.21 to add it under the LEAP section of the manual as 3.753.21.	<u>    </u>	Yes	<u>X</u>	No
3.753.22	Residency Requirements	Transfers this rule from 3.752.27.	<u>    </u>	Yes	<u>X</u>	No
3.754	Reasons for Denial of Assistance	Copies 3.120.52 to add it under the LEAP section of the manual as 3.754.	<u>    </u>	Yes	<u>X</u>	No
3.754.1	Factors for Denial	Adds a new factor for denial to match the inclusion of the requirement for a Crisis Intervention Program inspection, also changes references and the description of the program from “Basic Program” to “Heating Fuel Assistance Program”.	<u>    </u>	Yes	<u>X</u>	No
3.754.11	None	Adds to rule a best practice of using the most appropriate reason for denial.	<u>    </u>	Yes	<u>X</u>	No
3.754.12	None	Creates a shorter period of time to provide a denial notice to clients.	<u>X</u>	Yes	<u>    </u>	No

Title of Proposed Rule: 2014-2015 Low-Income Energy Assistance Program (LEAP) Update

Rule-making#: 14-5-1-1

Office or Division/Program:  
Office of Economic Security/  
Division of Low-Income  
Energy Assistance

Rule Author: Enrique Hernandez

Phone: 303-861-0235

3.755.11	Program Requirements	Changes the reference in the rule form 3.140 to 3.753.	<u>—</u>	Yes	<u>X</u>	No
3.755.12	Information not in the Application	Adds the words “in the system” to clarify that all information must be documented in the system.	<u>—</u>	Yes	<u>X</u>	No
3.755.13	The case record shall contain at a minimum:	Adds the requirement to document the use of historical data in the system by adding the following: “G. All historical data used must be present in the file, and documented in ROC”. This has been a best practice and is now being place in rule.	<u>—</u>	Yes	<u>X</u>	No
3.755.14	Written Policy	Copies 3.160.42 to add it under the LEAP section as 3.755.15.	<u>X</u>	Yes	<u>—</u>	No
3.755.15	County Storage of Records	Copies 3.160.51 to add it under the LEAP section as 3.755.16.	<u>X</u>	Yes	<u>—</u>	No
3.755.16	State authority required for removal of case records	Copies 3.160.52 to add it under the LEAP section as 3.755.17.	<u>X</u>	Yes	<u>—</u>	No
3.755.17	None	Creates a rule giving the county direction of how many years case files must be retained. Three past program years plus the current has been the practice and is now becoming a rule.	<u>X</u>	Yes	<u>—</u>	No
3.755.21 H	Adequate Verification of Income: Zero Income	Improves the verification of zero income from one required method to two. This will prevent fraud.	<u>X</u>	Yes	<u>—</u>	No

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Phone: 303-861-0235

3.755.21 I	Adequate Verification of Income: Self-employment	Adds guidance on the proper deductions allowable to self-employed applicants. This was the practice but the counties wanted it in rule.	<u>X</u>	Yes	—	No
3.755.21 J	None	Adds the rule on how to treat owners of LLC's or S-Corps and how to verify their income. This information was provided to counties through an agency letter and the counties prefer it be included in rule.	<u>X</u>	Yes	—	No
3.755.44	None	Adds the method of verification of wood purchases when used as primary fuel. This will aid the counties in making better and more accurate determinations of eligibility.	<u>X</u>	Yes	—	No
3.758.47 Step A, 2	Methodology for Calculating Basic Program Benefits Determine Estimated Home Heating Costs	Adjusts the flat rates in the table to reflect the data obtained in the 2013-2014 LEAP Season. It also adds a new type of fuel, "Propane Bottles" to the table as defined in 3.751.1.	—	Yes	<u>X</u>	No
3.758.47 Step A, 3	Methodology for Calculating Basic Program Benefits Determine Estimated Home Heating Costs	Adjusts the flat rates in the table to reflect the data obtained in the 2013-2014 LEAP Season.	—	Yes	<u>X</u>	No

Title of Proposed Rule: 2014-2015 Low-Income Energy Assistance Program (LEAP) Update  
Rule-making#: 14-5-1-1  
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## **STAKEHOLDER COMMENT SUMMARY**

### **DEVELOPMENT**

The following individuals and/or entities were included in the development of these proposed rules (such as other Program Areas, Legislative Liaison, Sub-PAC, and the Child Welfare Action Committee):

LEAP county stakeholders were instrumental in the development of these changes, providing guidance and advice to the process.

### **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:

Colorado Legal Services, Economic Security Sub-PAC, Energy Outreach Colorado (EOC), Colorado Energy Office (CEO), Governor's Commission on Low Income Energy Assistance, Colorado Cross-Disability Coalition, Colorado Rural Electric Association, County LEAP managers and the County Human Services Directors Association.

Are other State Agencies (such as the 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 ☒ No

Have these rules been reviewed by the appropriate Sub-PAC Committee?

☒ Yes ☐ No

Date presented June 5, 2014. Were there any issues raised? X Yes \_\_\_ No

If not, why.

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 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.*

Title of Proposed Rule: 2014-2015 Low-Income Energy Assistance Program (LEAP) Update

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### **STAKEHOLDER COMMENT SUMMARY** (continued)

All changes and additions were reviewed by County LEAP managers and all rules that were copied were requested by this group. This group also requested the name change from the Basic Program to the Heating Fuel Assistance Program, to make the intention of the program clearer. All their comments were addressed to their satisfaction.

On rule 3.751.64 County Case File Review, Logan County expressed concern that the process will increase their workload to make it unmanageable.

Response: The program assured the county that the requirements of this rule were lower than what the county is already doing and that the process will be clear and concise.

Other counties wanted to have a clear time frame for the reviews to take place.

Response: The Program and the counties agreed on October 1<sup>st</sup> to May 30<sup>th</sup>.

Economic Security Sub-PAC objected to the Program's intention to limit access to LEAP benefits for clients that gathered wood without Wood Permits.

Response: The Program decided to remove the limitation and maintain access for those clients.

The Office of Economic Security requested that language on the appropriate use of the EBT card be added to the LEAP rules.

The Colorado Cross-Disability Coalition (CCDC) had some technical questions that were answer to their satisfaction. Also they commented on the addition of 3.751.35 as follows:

**CCDC:** there are people that cannot write who are not illiterate. Make sure it is clear that stamps and signatures provided by another person but authorized by applicant are allowed.

**LEAP Response:** This rule is only intended to aid clients that cannot read or write. If a client has a disability it will be accommodated appropriately.

## (9 CCR 2503-7)

### **3.750 LOW-INCOME ENERGY ASSISTANCE PROGRAMS**

#### **3.750.1 AUTHORITY**

##### **3.750.11 Low-Income Home Energy Assistance Act [Rev. eff. 11/1/84]**

Programs authorized under the Low-Income Home Energy Assistance Act include a ~~Basic Program~~ HEATING FUEL ASSISTANCE PROGRAM and a Crisis Intervention Program.

##### **3.750.12 Intent of the ~~Basic Program~~ HEATING FUEL ASSISTANCE PROGRAM [Rev. eff. 9/15/12]**

The ~~Basic Program~~ HEATING FUEL ASSISTANCE PROGRAM is intended to help meet winter home heating costs of households composed of low-income families and individuals.

##### **3.750.13 ~~(None)~~ [Rev. eff. 9/15/12] INTENT OF THE CRISIS INTERVENTION PROGRAM**

THE CRISIS INTERVENTION PROGRAM (CIP) IS INTENDED TO ASSIST WITH THE REPAIR OR REPLACEMENT OF THE NON-WORKING PRIMARY HEATING SYSTEM OF APPROVED HEATING FUEL ASSISTANCE PROGRAM APPLICANTS.

##### **3.750.14 ~~(None)~~ [Rev. eff. 2/1/12]**

##### **3.750.15 Funding [Rev. eff. 9/1/11]**

This program is federally and privately funded and is subject to availability of funds. If funds are increased, decreased or become unavailable, the services provided herein shall be increased, decreased or terminated accordingly.

### **3.751 GENERAL PROVISIONS**

#### **3.751.1 DEFINITIONS [Rev. eff. 11/1/13]**

"Applicant": The person who completes and signs the basic LEAP application form. This is also the only household member who is required to provide proof of lawful presence as defined in these rules.

~~"Application Period for the Purpose of Income Verification": The application period is from the date of application to the same date of the prior month (approximately thirty (30) calendar days prior to date of application) when used to verify income except for earned ongoing income in accordance with 3.752.22, A.~~

"APPROVED VENDOR" MEANS A VENDOR THAT HAS SIGNED A STATE SPECIFIED AGREEMENT AS IT IS PRESCRIBED IN SECTION 3.758.46.

"Bulk Fuel": Bulk fuel is an energy source for home heating which may be purchased in quantity from a fuel supplier and stored by the household to be used as needed. Normally, bulk fuel includes wood, propane, kerosene, coal and fuel oil.

"Completed Application": A basic LEAP application shall be considered to be a completed application when:

- A. The applicant has provided an adequate response to all application questions which are necessary to determine eligibility and payment level;



B. The applicant has provided all required verification. A Social Security Number (SSN) for each household member or proof of application for a SSN must be provided. A SSN is required to determine eligibility. If no SSN is provided for a household member, that member will not be included in the household, but the member's income will be counted;

C. The application is signed;

D. The applicant has provided proof of lawful presence in the United States (see Section ~~3.140.11~~ 3.753).

"Date of Application": For purposes of the Low-Income Energy Assistance Programs, the date of application shall be the date an application form that contains a legible name and address is received by the county department.

"Disabled or Handicapped": For purposes of the Low-Income Energy Assistance Programs, the term disabled or handicapped means persons who receive vocational rehabilitation assistance; Social Security disability, SSI, AB, AND, veterans disability payments, or who provide a physician's statement which indicates incapacity to engage in substantial gainful employment. This definition may be different for other public assistance programs.

"Elderly": For the purposes of these rules, the term elderly means aged 60 or over.

"Eligibility Period": There shall be one eligibility period for the Basic Low-Income Energy Assistance Programs from November 1st through April 30th. If April 30th for a particular calendar year falls on a holiday or weekend, then the eligibility period shall be extended until midnight the next business day. This program is contingent upon the continued availability of funds in accordance with Sections 3.750.15 and 3.758.48.

"Emergency Applicant": This is a household which has had heat service discontinued or is threatened with discontinuance, or is out of fuel or will run out of fuel within fourteen calendar days or the client is responsible for heating costs that are included in rent and has received an eviction notice to vacate the premises within thirty (30) calendar days. Applications for households in these situations shall be processed expeditiously and the emergency addressed within fourteen calendar days of notification of the emergency by the applicant to the county department.

"Estimated Home Heating Costs (EHHC)": The amount of the heating costs incurred during the previous heating season for the applicant's address at the time of application to be used as an estimate, or projection, of the anticipated heating costs for the current heating season (November 1st through April 30th). Such estimated heating costs shall not include payment arrearages, investigative charges, reconnection fees, or other such charges not related to residential fuel prices and consumption levels. AN EHHC CAN ONLY BE OBTAINED FROM APPROVED VENDORS, FOR ALL OTHER VENDORS USE FLAT RATES.

"Heat Related Arrearage": Any past due amounts for the primary heating fuel and/or supportive fuel.

"Home Heating Costs": Charges related directly to the primary heating fuel used in a residential dwelling.

"Household": The term "household" shall mean any individual or group of individuals who are living together as one economic unit for whom primary heating fuel is customarily purchased in common or who make undesignated payments for heat in the form of rent (see 3.751.2).

~~—Any individual considered as part of an approved household cannot subsequently be considered as part of another household during the same eligibility period.~~

~~—Each person living at a residence must be counted as either a member of the applicant's household or a member of a separate household.~~

~~—The maximum number of household members shall be fifteen (15). The maximum number of separate households shall be nine (9).~~

~~—The following cannot be classified as separate households:~~

- ~~A. Husband and wife living together;~~
- ~~B. Children under eighteen (18) years of age and living in the same dwelling as the parent or guardian, unless emancipated.~~
- ~~C. Supplemental Security Income (SSI) recipients in shared households receiving reduced benefits.~~

"INCOME VERIFICATION PERIOD": THE INCOME VERIFICATION PERIOD IS FROM THE DATE OF APPLICATION TO THE SAME DATE OF THE PRIOR MONTH (APPROXIMATELY THIRTY (30) CALENDAR DAYS PRIOR TO DATE OF APPLICATION) WHEN USED TO VERIFY INCOME EXCEPT FOR EARNED ONGOING INCOME IN ACCORDANCE WITH SECTION 3.752.22, B.

"LIFE THREATENING CRISIS" MEANS A HOUSEHOLD WHOSE MEMBERS' HEALTH AND/OR WELL-BEING WOULD LIKELY BE ENDANGERED IF ENERGY ASSISTANCE OR REPAIR OR REPLACEMENT OF THE PRIMARY HEATING SYSTEM IS NOT PROVIDED.

"Non-Bulk Fuel": Non-bulk or metered fuel is an energy source for home heating which is provided by a utility company and is regulated and metered by the utility company. Normally, non bulk fuel includes natural gas and electricity.

"Non-Traditional Dwelling": A non-traditional dwelling means a structure that provides housing that is not affixed to a permanent physical address or is enumerated as such in this rule (see Section 3.752.25), including, but not limited to, cars, vans, buses, tents and lean-tos.

"Point in Time": Point in time indicates that eligibility is determined by accounting for the circumstances of the household on the date of the application, regardless of any changes thereafter.

"Poverty Level": The term poverty level as used in these rules describes federal guidelines updated annually by the U.S. Department of Health and Human Services. The guidelines, printed in the Federal Register, establish minimum subsistence income levels by household size.

"Primary Heating Fuel": The primary heating fuel is the main type of fuel used to provide heat within the dwelling. When heat (such as natural gas and/or electric) is included in the rent, this may be reflected as "utilities" included in rent.

"Primary Heating Source": The primary heating system that provides heat to the dwelling such as a furnace, wood burning stove or boiler. Temporary or portable heating sources are not considered a primary heating source and, therefore, are not eligible for LEAP assistance.

~~"Program Year": The term program year means from November 1st through April 30th for the Basic-~~  
~~Program HEATING FUEL ASSISTANCE PROGRAM. If April 30th for a particular calendar year falls on a~~  
~~holiday or weekend, then the eligibility periods shall be extended until midnight the next business day.~~  
This program is contingent upon the continued availability of funds in accordance with Sections 3.750.15 and 3.758.48.

"PROPANE BOTTLES" ARE SMALL PROPANE CONTAINERS THAT HOLD LESS THAN ONE HUNDRED (100) GALLONS.

"Public Assistance Income": For purposes of verifying income under the Low-Income Energy Assistance Programs, the term public assistance income shall mean income received from the following types of Department of Human Services programs:

- A. Colorado Works;
- B. OAP (Old Age Pension, both the SSI-supplement and State-only groups);

- C. AND (Aid to the Needy Disabled, both the SSI-supplement and State-only groups);
- D. AB (Aid to the Blind, both the SSI-supplement and State-only groups);
- E. NCRA (Non-Categorical Refugee Assistance);
- F. SSDI (Social Security Disability Insurance) for clients on another state program, such as a Medicaid waiver or buy in program.

"REPORT OF CONTACT (ROC)" MEANS THE ELECTRONIC CHRONOLOGICAL HISTORY OF THE CASE WHICH CONTAINS BOTH SYSTEM GENERATED ENTRIES AND MANUAL ENTRIES.

"Subsidized Housing": Subsidized housing means housing in which a tenant receives an ongoing governmental or other subsidy (e.g., assistance provided by a church) and the amount of rent paid is based on the amount of the tenant's income.

"Supportive Fuel": Supportive fuel is an energy source needed to operate the primary heating system in a residential setting. For example, electricity is a supportive fuel required to operate a natural gas furnace. Supportive fuels are not eligible for LEAP assistance.

"Traditional Dwelling": Traditional dwelling means a structure that provides a housing or residential environment that is affixed to a permanent physical address.

"Vendor": A vendor is an individual, a group of individuals, or a company who is regularly in the business of selling fuel (bulk or non bulk) to customers for residential home heating purposes.

### **3.751.2 (NONE) HOUSEHOLDS**

- A. ANY INDIVIDUAL CONSIDERED AS PART OF AN APPROVED HOUSEHOLD CANNOT SUBSEQUENTLY BE CONSIDERED AS PART OF ANOTHER HOUSEHOLD DURING THE SAME ELIGIBILITY PERIOD.
- B. EACH PERSON LIVING AT A DWELLING MUST BE COUNTED AS EITHER A MEMBER OF THE APPLICANT'S HOUSEHOLD OR A MEMBER OF A SEPARATE HOUSEHOLD.
- C. THE MAXIMUM NUMBER OF HOUSEHOLD MEMBERS SHALL BE FIFTEEN (15). THE MAXIMUM NUMBER OF SEPARATE HOUSEHOLDS SHALL BE NINE (9).
- D. THE FOLLOWING CANNOT BE CLASSIFIED AS SEPARATE HOUSEHOLDS:
  - 1. HUSBAND AND WIFE LIVING TOGETHER;
  - 2. CHILDREN UNDER EIGHTEEN (18) YEARS OF AGE AND LIVING IN THE SAME DWELLING AS THE PARENT OR GUARDIAN, UNLESS EMANCIPATED.
  - 3. INDIVIDUALS THAT ENTER INTO CIVIL UNIONS.

### **3.751.21 PERMANENT SEPARATION**

A MARRIED COUPLE IS CONSIDERED TO BE PERMANENTLY SEPARATED WHEN:

- A. THEY ARE DIVORCED OR LEGALLY SEPARATED; OR,
- B. BOTH PHYSICAL AND FINANCIAL TIES HAVE BEEN DISSOLVED AND A RELATIONSHIP AS SPOUSES NO LONGER EXISTS.

### **3.751.22 PRESUMPTION OF MARRIAGE**

UNLESS THERE HAS BEEN A DIVORCE OR LEGAL SEPARATION, THE PRESUMPTION IS MADE THAT THE COUPLE IS STILL MARRIED. SUCH PRESUMPTION MUST BE REFUTED BY PERSONS, OTHER THAN THE SPOUSES, WHO CAN ESTABLISH THAT THEY ARE IN A POSITION TO KNOW AND ASSERT THAT A COMPLETE AND PERMANENT SEPARATION DOES, IN FACT, EXIST.

### **3.751.3 NON DISCRIMINATION POLICIES/RIGHT AND OPPORTUNITY TO APPLY**

#### **3.751.31 Non-Discrimination [Rev. eff. 9/15/12]**

Non-discrimination policies as outlined in this rule manual shall apply to all households applying for the ~~Basic Program~~ HEATING FUEL ASSISTANCE PROGRAM.

#### **3.751.32 Opportunity to Apply [Rev. eff. 11/1/84]**

All persons shall be provided an opportunity to file an application form on the date of initial contact with the county department during the application period.

#### **3.751.33 Interpreters [Rev. eff. 9/1/11]**

An interpreter shall be available to assist persons known to the Department to be non-English speaking in completing application forms and to provide information between the applicant and the county department.

#### **3.751.34 Authorized Representative [Rev. eff. 11/1/13]**

A formal, legal authorized representative may apply on behalf of an applicant household when the applicant household is unable to apply on its own behalf. Proper legal documentation of guardianship and/or durable power of attorney must be presented.

#### **3.751.35 Authorized Representative [Rev. eff. 11/1/84] SIGNATURE BY MARK**

~~An authorized representative may apply on behalf of an applicant household when the applicant household is unable to apply on its own behalf.~~ APPLICANTS WHO ARE PARTIALLY OR TOTALLY ILLITERATE AND WHO CANNOT WRITE THEIR NAMES SHALL MAKE A MARK, AND SUCH MARK SHALL BE WITNESSED BY THE SIGNATURE OF AT LEAST ONE WITNESS. THE ADDRESS OF SUCH WITNESS SHALL FOLLOW THE SIGNATURE. COUNTY WORKERS MAY ACT AS WITNESSES IF NOT RELATED TO THE APPLICANT.

### **3.751.4 NOTICE AND HEARINGS**

#### **3.751.41 Timely and Adequate Notice [Rev. eff. 9/15/12]**

The requirements for providing timely and adequate notice of proposed actions and opportunity for hearings and appeals are as provided in the chapter on "Administrative Procedures" in ~~this rule~~ SECTION 3.800 3.830 ( 9 CCR 2503-8) ~~manual~~, except as specifically provided in the rules governing the ~~Basic Program~~ HEATING FUEL ASSISTANCE PROGRAM.

#### **3.751.42 Denials [Rev. eff. 9/15/12]**

Notices of denial shall advise the applicant of the reason for the denial, the regulation citation relied on by the county department, and appeal rights and procedures. For advance payments of the ~~Basic Program~~ HEATING FUEL ASSISTANCE PROGRAM, notices of denial shall advise the applicants of their right to a forthwith hearing.

#### **3.751.43 Request for a State Level Fair Hearing [Rev. eff. 9/15/12]**

County departments shall notify the State LEAP office in writing within seven (7) days upon receipt of a request for a State level fair hearing by an applicant on ~~Basic Program~~ HEATING FUEL ASSISTANCE PROGRAM. See Sections 3.850.1 – 3.850.56 (9 CCR 2503-8) ~~of this rule manual~~.

### **3.751.44 NOTICE OF APPROPRIATE USE OF ELECTRONIC BENEFIT TRANSFER (EBT) CARD**

AN EXPLANATION SHALL BE 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 LEAP CASH PORTION ISSUED ON THE EBT CARD MAY BE SUSPENDED WITH IDENTIFIED MISUSE.

### **3.751.5 RECOVERY AND FRAUD PROCEDURES**

#### **3.751.51 Recoveries [Rev. eff. 9/15/12]**

County departments must institute recoveries to ensure that ~~Basic Program~~ HEATING FUEL ASSISTANCE PROGRAM benefits do not exceed the maximum amounts described in these rules. Recovery procedures shall be the same as in adult program rules as described in the "Administrative Procedures" Chapter or as otherwise specified in these rules. (Note: Sections 3.810.13, 3.810.14, and 3.810.32 (9 CCR 2503-8) do not apply to LEAP.)

#### **3.751.52 Determination of Recovery of Overpayment [Rev. eff. 10/1/01]**

When overpayments, made directly to the client, have been verified by the county department, a determination as to whether recovery is appropriate shall be made within fifteen (15) calendar days after receipt of reports issued by the State Department designed to assist county departments in identifying and correcting such payments.

#### **3.751.53 Definition of Overpayment [Rev. eff. 9/15/12]**

Overpayment of ~~Basic Program~~ HEATING FUEL ASSISTANCE PROGRAM benefits shall mean a household has received benefits in excess of the amount due that household based on eligibility and payment determination in accordance with these rules.

\*\*\*\*\*

### **3.751.6 REPORTING AND MONITORING**

#### **3.751.61 Reporting**

All recoveries shall be reported to the State Department at the conclusion of the program year.

#### **3.751.62 Reports and Fiscal Information [Rev. eff. 11/1/98]**

County departments shall provide the State Department with reports and fiscal information as deemed necessary by the State Department.

#### **3.751.63 Monitoring [Rev. eff. 11/1/98]**

The State Department shall have responsibility for monitoring programs administered by the county departments based on a monitoring plan developed by the State Department. Such plan shall include provisions for programmatic and local reviews and methods for corrective actions.

#### **3.751.64 COUNTY CASE FILE REVIEW**

COUNTY DEPARTMENT SUPERVISORY PERSONNEL SHALL REVIEW ELIGIBILITY DETERMINATIONS MONTHLY, FROM OCTOBER 1<sup>ST</sup> TO MAY 30<sup>TH</sup>, AND SUBMIT THE RESULTS OF THOSE REVIEWS WHEN REQUESTED BY THE STATE. AT MINIMUM THE SUPERVISOR SHALL:

A. PULL A RANDOM SAMPLE OF TWO DETERMINATIONS PER TECHNICIAN;

- B. DETERMINE THE CORRECTNESS OF ELIGIBILITY DETERMINATIONS ACCOMPLISHED.
- C. ENSURE TIMELY CORRECTION OF ANY DETERMINATION ERRORS; AND,
- D. MAINTAIN A RECORD OF THE CASES REVIEWED FOR AUDIT PURPOSES.

### **3.751.7 REIMBURSEMENT AND SANCTIONS**

#### **3.751.71 Reimbursements [Rev. eff. 9/15/12]**

Subject to allocations as determined by the State Department, county departments shall be reimbursed up to 100% for all allowable costs incurred for the operation of the ~~Basic Program~~ HEATING FUEL ASSISTANCE PROGRAM, outreach, and other administrative costs.

#### **3.751.72 Sanctions [Rev. eff. 9/15/12]**

County departments which fail to follow the rules of the ~~Basic Program~~ HEATING FUEL ASSISTANCE PROGRAM shall be subject to administrative sanctions as determined by the State Department (see 11 CCR 2508-1).

### **3.752 LOW-INCOME ENERGY ASSISTANCE PROGRAM: ~~BASIC~~ HEATING FUEL ASSISTANCE PROGRAM**

#### **3.752.1 APPLICATION PERIOD [Rev. eff. 11/1/13]**

To apply for LEAP, the general public shall submit a written State prescribed application form (IML-4) during the period of November 1st through April 30th. If April 30th for a particular calendar year falls on a holiday or weekend, then the eligibility periods shall be extended until midnight the next business day. These programs are contingent upon the continued availability of funds in accordance with Sections 3.750.15 and 3.758.48. The county department shall accept all application forms that are received or postmarked during the application period. Facsimile copies of completed application forms shall be accepted as valid. Preference shall be given to application forms received from public assistance households (such as Colorado Works, Old Age Pension (OAP), Aid to the Needy Disabled (AND), Aid to the Blind (AB), and Food Assistance). Such applications received prior to November 1st shall be accepted and may be processed; however, eligibility shall not be effective until November 1st. Application forms received or postmarked after the closing date shall be denied. Eligibility will be determined based on the applicant's circumstances on the date the application is received by the county department. Although applications may be accepted and processed earlier, the effective date of application shall not be before November 1st.

#### **3.752.2 PROGRAM ELIGIBILITY REQUIREMENTS**

##### **~~3.752.21~~ [Rev. eff. 11/1/13]**

To be determined eligible for a ~~Basic Program~~ HEATING FUEL ASSISTANCE PROGRAM payment, households must, at time of application, be vulnerable to the rising costs of home heating, and meet income and other requirements of the program as defined in these regulations.

The following factors shall be considered as of the date of application: Colorado state residency, U.S. citizenship/alien status, lawful presence, income, vulnerability, fuel type, household composition, shared living arrangements, dwelling type, and estimated home heating costs.

##### **3.752.21 COUNTABLE UNEARNED INCOME**

COUNTABLE UNEARNED INCOME INCLUDES BUT IS NOT LIMITED TO THE FOLLOWING, AS WELL AS PAYMENTS FROM ANY OTHER SOURCE WHICH ARE CONSIDERED TO BE A GAIN OR BENEFIT TO THE APPLICANT OR RECIPIENT:

- A. INHERITANCE, GIFTS, AND PRIZES;

- B. DIVIDENDS AND INTEREST RECEIVED ON SAVINGS BONDS, LEASES, ETC.;
- C. INCOME FROM RENTAL PROPERTY;
- D. PROCEEDS OF A LIFE INSURANCE POLICY TO THE EXTENT THAT THEY EXCEED THE AMOUNT EXPENDED BY THE BENEFICIARY FOR THE PURPOSE OF THE INSURED RECIPIENT'S LAST ILLNESS AND OR BURIAL WHICH THAT ARE NOT COVERED BY OTHER BENEFITS;
- E. PROCEEDS OF A HEALTH INSURANCE POLICY OR PERSONAL INJURY LAWSUIT TO THE EXTENT THAT THEY EXCEED THE AMOUNT TO BE EXPENDED OR REQUIRED TO BE EXPENDED FOR MEDICAL CARE;
- F. STRIKE BENEFITS;
- G. INCOME FROM JOINTLY OWNED PROPERTY: - IN A PERCENTAGE AT LEAST EQUAL TO THE PERCENTAGE OF OWNERSHIP OR, IF RECEIVING MORE THAN PERCENTAGE OF OWNERSHIP, THE ACTUAL AMOUNT RECEIVED;
- H. LEASE BONUSES (OIL OR MINERAL) RECEIVED BY THE LESSOR AS AN INDUCEMENT TO LEASE LAND FOR EXPLORATION ARE INCOME IN THE MONTH RECEIVED;
- I. OIL OR MINERAL ROYALTIES RECEIVED BY THE LESSOR ARE INCOME IN THE MONTH RECEIVED;
- J. SUPPLEMENTAL SECURITY INCOME (SSI) BENEFITS RECEIVED BY AN APPLICANT OR RECIPIENT SHALL BE CONSIDERED INCOME IN THE MONTH RECEIVED;
- K. INCOME DERIVED FROM MONIES (OR OTHER PROPERTY ACQUIRED WITH SUCH MONIES) RECEIVED PURSUANT TO THE "CIVIL LIBERTIES ACT OF 1988", P.L. 100-383;
- L. AMOUNTS WITHHELD FROM UNEARNED INCOME BECAUSE OF A GARNISHMENT ARE COUNTABLE AS UNEARNED INCOME.

### **3.752.211 PERIODIC PAYMENTS**

THE FOLLOWING TYPES OF PERIODIC PAYMENTS ARE AMONG THOSE INCLUDED IN COUNTABLE UNEARNED INCOME:

- A. ANNUITIES - PAYMENTS CALCULATED ON AN ANNUAL BASIS WHICH ARE IN THE NATURE OF RETURNS ON PRIOR PAYMENTS OR SERVICES; THEY MAY BE RECEIVED FROM ANY SOURCE;
- B. PENSION OR RETIREMENT PAYMENTS - PAYMENTS TO AN APPLICANT OR RECIPIENT FOLLOWING RETIREMENT FROM EMPLOYMENT; SUCH PAYMENTS MAY BE MADE BY A FORMER EMPLOYER OR FROM ANY INSURANCE OR OTHER PUBLIC OR PRIVATE FUND;
- C. DISABILITY OR SURVIVOR'S BENEFITS - PAYMENT TO AN APPLICANT OR RECIPIENT WHO HAS SUFFERED INJURY OR IMPAIRMENT, OR, TO SUCH APPLICANT'S OR RECIPIENT'S DEPENDENTS OR SURVIVORS; SUCH PAYMENTS MAY BE MADE BY AN EMPLOYER OR FROM ANY INSURANCE OR OTHER PUBLIC OR PRIVATE FUND;
- D. WORKER'S COMPENSATION PAYMENTS - PAYMENTS AWARDED UNDER FEDERAL AND STATE LAW TO AN INJURED EMPLOYEE OR TO SUCH EMPLOYEE'S DEPENDENTS; AMOUNTS INCLUDED IN SUCH AWARDS FOR MEDICAL, LEGAL, OR RELATED EXPENSES INCURRED BY AN APPLICANT OR RECIPIENT IN CONNECTION WITH SUCH CLAIM ARE DEDUCTED IN DETERMINING THE AMOUNT OF COUNTABLE UNEARNED INCOME;

- E. VETERAN COMPENSATION AND PENSION - PAYMENTS BASED ON SERVICE IN THE ARMED FORCES; SUCH PAYMENTS MAY BE MADE BY THE U.S. VETERANS ADMINISTRATION, ANOTHER COUNTRY, A STATE OR LOCAL GOVERNMENT, OR OTHER ORGANIZATION. ANY PORTION OF A VA PENSION THAT IS PAID TO A VETERAN FOR SUPPORT OF A DEPENDENT SHALL BE CONSIDERED COUNTABLE UNEARNED INCOME TO THE DEPENDENT RATHER THAN THE VETERAN.
- F. UNEMPLOYMENT COMPENSATION - PAYMENTS IN THE NATURE OF INSURANCE FOR WHICH ONE QUALIFIES BY REASON OF HAVING BEEN EMPLOYED AND WHICH ARE FINANCED BY CONTRIBUTIONS MADE TO A FUND DURING PERIODS OF EMPLOYMENT;
- G. RAILROAD RETIREMENT PAYMENTS - PAYMENTS, SUCH AS SICK PAY, ANNUITIES, PENSIONS, AND UNEMPLOYMENT INSURANCE BENEFITS, WHICH ARE PAID BY THE RAILROAD RETIREMENT BOARD (RRB) TO AN APPLICANT OR RECIPIENT WHO IS OR WAS A RAILROAD WORKER, OR TO SUCH WORKER'S DEPENDENTS OR SURVIVORS;
- H. SOCIAL SECURITY BENEFITS - OLD AGE (OR RETIREMENT), SURVIVORS AND DISABILITY INSURANCE PAYMENTS (OASDI OR RSDI) MADE BY THE SOCIAL SECURITY ADMINISTRATION; ALSO INCLUDED ARE SPECIAL PAYMENTS AT AGE SEVENTY-TWO (72) (PROUTY BENEFITS) AND BLACK LUNG BENEFITS;
- I. SUPPLEMENTAL SECURITY INCOME (SSI) - PUBLIC ASSISTANCE PAYMENTS MADE BY THE SOCIAL SECURITY ADMINISTRATION TO AN APPLICANT OR RECIPIENT AGE SIXTY FIVE (65) YEARS OF AGE OR OLDER, OR WHO IS BLIND OR DISABLED; SUCH PAYMENTS ARE CONSIDERED IN ACCORDANCE WITH REQUIREMENTS SPECIFIED IN THE APPLICABLE ASSISTANCE PROGRAM CHAPTER.

### **3.752.212 MILITARY ALLOTMENT**

A MILITARY ALLOTMENT RECEIVED ON BEHALF OF AN APPLICANT OR RECIPIENT FOR THOSE INDIVIDUALS INCLUDED IN THE BUDGET UNIT SHALL BE CONSIDERED AS INCOME IN THE MONTH RECEIVED.

### **3.752.22 Income and Household Size Criteria [Rev. eff. 11/1/13]**

- A. ALL COUNTABLE UNEARNED INCOME SHALL BE THE COUNTABLE GROSS UNEARNED INCOME RECEIVED IN THE INCOME VERIFICATION PERIOD, NOT TO EXCEED ONE MONTH'S INCOME.
- ~~A.~~ **B.** For purposes of determining a household's eligibility, earned ongoing income shall be the countable gross income in any four (4) weeks of the eight (8) weeks prior to the application date.

#### **~~B.~~ C. Determining Monthly Income**

If a household member is paid less than monthly, the county department shall determine gross monthly income by:

##### **1. Weekly/Bi-Weekly Income**

###### **a. Weekly Income**

Adding four gross weekly income amounts to obtain total monthly income.

###### **b. Bi-Weekly Income**

Adding two gross bi-weekly income amounts to obtain total monthly income.

##### **2. Semi-Monthly Income**



Adding two gross semi-monthly income amounts to obtain total monthly income.

3. Partial Month Income

a. Terminated Income

If a household member's income is terminated as of the application date, use actual income received IN THE INCOME VERIFICATION PERIOD. ~~for the application period (3.751.1 "Application Period for the Purpose of Income Verification").~~

b. Earned New Income

If a household member has a new source of earned income as of the application date, use income received IN THE INCOME VERIFICATION PERIOD. ~~for the application period (3.751.1 "Application Period for the Purpose of Income Verification").~~

c. Unemployment/Other Unearned Income

If a household member has not received his/her first check from this source of income as of the INCOME VERIFICATION PERIOD ~~application period~~, do not count any income from this source. If the household member has received the first check from this source of income as of the INCOME VERIFICATION PERIOD ~~application period~~, use actual income for the INCOME VERIFICATION PERIOD. ~~application period (3.751.1 "Application Period for the Purpose of Income Verification").~~

- ~~C.~~ **D.** All applicant households whose countable income for the eligibility period is ONE HUNDRED AND FIFTY PERCENT (150%) of the FEDERAL poverty level, shall meet the income requirements for the ~~Basic Program~~ HEATING FUEL ASSISTANCE PROGRAM. The State Department shall adjust the income limits annually based on funds available and the federal poverty guidelines published in the Federal Register applicable at the time of application; no later editions or amendments are included. The following table contains the income standards:

HOUSEHOLD SIZE	MONTHLY GROSS INCOME 150% of Poverty
1	<del>\$1,436</del> <b>\$1,459</b>
2	<del>1,939</del> <b>\$1,967</b>
3	<del>2,441</del> <b>\$2,474</b>
4	<del>2,944</del> <b>\$2,982</b>
5	<del>3,446</del> <b>\$3,489</b>
6	<del>3,949</del> <b>\$3,997</b>
7	<del>4,451</del> <b>\$4,504</b>
8	<del>4,954</del> <b>\$5,012</b>
Each Additional Person	<del>503</del> <b>\$ 508</b>

~~D.~~ Income shall be treated in accordance with the rules as contained in the Resources and Income chapter of this staff manual pertaining to the adult programs.

E. Households which have been denied basic benefits and have had changes in circumstances may reapply.

**3.752.23 Income Exclusions [Rev. eff. 9/15/12]**

TO DETERMINE ELIGIBILITY FOR FINANCIAL ASSISTANCE AND THE AMOUNT OF THE ASSISTANCE PAYMENT, THE FOLLOWING SHALL BE EXEMPT FROM CONSIDERATION AS EITHER RESOURCES OR INCOME:

- A. THE VALUE OF FOOD ASSISTANCE AND USDA DONATED FOODS;
- B. BENEFITS RECEIVED UNDER TITLE III, NUTRITION PROGRAM FOR THE ELDERLY, OF THE OLDER AMERICANS ACT;
- C. THE VALUE OF SUPPLEMENTAL FOOD ASSISTANCE RECEIVED UNDER THE SPECIAL FOOD SERVICES PROGRAM FOR CHILDREN PROVIDED FOR IN THE NATIONAL SCHOOL LUNCH ACT AND UNDER THE CHILD NUTRITION ACT, INCLUDING BENEFITS RECEIVED FROM THE SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS AND CHILDREN (WIC);
- D. HOME PRODUCE UTILIZED FOR PERSONAL CONSUMPTION;
- E. THE VALUE OF ANY ASSISTANCE PAID WITH RESPECT TO A DWELLING UNIT UNDER:
  - 1. THE UNITED STATES HOUSING ACT OF 1937;
  - 2. THE NATIONAL HOUSING ACT;
  - 3. SECTION 101 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1965;
  - 4. TITLE V OF THE HOUSING ACT OF 1949; OR
  - 5. SECTION 202(H) OF THE HOUSING ACT OF 1959.
- F. PAYMENTS TO VOLUNTEERS SERVING AS FOSTER GRANDPARENTS, SENIOR HEALTH AIDES, OR SENIOR COMPANIONS, AND TO PERSONS SERVING IN THE SERVICE CORPS OF RETIRED EXECUTIVES (SCORE) AND ACTIVE CORPS OF EXECUTIVES (ACE) AND ANY OTHER PROGRAM UNDER TITLE I (VISTA) WHEN THE VALUE OF ALL SUCH PAYMENTS ADJUSTED TO REFLECT THE NUMBER OF HOURS SUCH VOLUNTEERS ARE SERVING IS NOT EQUIVALENT TO OR GREATER THAN THE MINIMUM WAGE, AND TITLE II AND III OF THE DOMESTIC VOLUNTEER SERVICES ACT;
- G. COMPENSATION RECEIVED BY THE APPLICANT OR RECIPIENT PURSUANT TO THE COLORADO CRIME VICTIMS COMPENSATION ACT SHALL NOT BE CONSIDERED AS INCOME, PROPERTY, OR SUPPORT AVAILABLE TO THE APPLICANT OR RECIPIENT. THIS IS COMPENSATION PAID TO INNOCENT VICTIMS OR DEPENDENTS OF VICTIMS OF CRIMINAL ACTS WHO SUFFER BODILY INJURY;
- H. MONIES RECEIVED PURSUANT TO THE "CIVIL LIBERTIES ACT OF 1988;
- I. ANY PAYMENT MADE FROM THE AGENT ORANGE SETTLEMENT FUND;
- J. THE VALUE OF ANY COMMERCIAL TRANSPORTATION TICKET, FOR TRAVEL BY AN APPLICANT OR RECIPIENT (OR SPOUSE) AMONG THE FIFTY (50) STATES, THE DISTRICT OF COLUMBIA, THE COMMONWEALTH OF PUERTO RICO, THE VIRGIN ISLANDS, GUAM, AMERICAN SAMOA, AND THE NORTHERN MARIANA ISLANDS, WHICH IS RECEIVED AS A GIFT BY SUCH APPLICANT OR RECIPIENT (OR SUCH SPOUSE) AND IS NOT CONVERTED TO CASH;
- K. REPARATION PAYMENTS MADE UNDER GERMANY'S LAW FOR COMPENSATION OF NATIONAL SOCIALIST PERSECUTION (GERMAN RESTITUTION ACT);
- L. ANY MONEY RECEIVED FROM THE RADIATION EXPOSURE COMPENSATION TRUST FUND;

M. REPARATION PAYMENTS MADE UNDER SECTIONS 500 THROUGH 506 OF THE AUSTRIAN GENERAL SOCIAL INSURANCE ACT;

N. PAYMENTS TO APPLICANTS OR RECIPIENTS BECAUSE OF THEIR STATUS AS VICTIMS OF NAZI PERSECUTION;

O. INCOME PAID TO CHILDREN OF VIETNAM VETERANS WHO WERE BORN WITH SPINA BIFIDA; OR,

~~The following exclusions and income calculation procedures shall be applied to household gross income:~~

~~A. Payments or benefits excluded as defined in the General Resource and Income Exemption Section of the "Resources and Income" chapter in this staff manual at Section 3.200.4, except that the following sections do not apply: 3.200.32; 3.240.16, B-F; 3.240.41; 3.250.14; 3.250.15.~~

~~P.-B. All financial aid monies, including educational loans, scholarships, and grants, as defined in Section 3.250.4 in this staff manual.~~

~~Q.-G. Earned income of children under the age of 18 who are residing with a parent or guardian.~~

~~R. D. Reimbursement received for expenses incurred in connection with employment from an employer.~~

~~S.-E. Reimbursement for past or future expenses, to the extent they do not exceed actual expenses, and do not represent gain or benefit to the household.~~

~~T.-F. Payments made on behalf of the household directly to others.~~

~~U.-G. Payment received as foster care income. Foster children are not considered household members.~~

~~V.-H. Home care allowance, if paid to a non-household member.~~

~~W.-I. State/county diversion payments.~~

~~X J. Reverse mortgages.~~

~~Y K. Subsidized housing utility allowances.~~

~~Z L. G.I. Bill educational allowances, including housing and food allowances.~~

### **3.752.24 Resources [Rev. eff. 10/1/01]**

There are not resource criteria for the Low-Income Energy Assistance Program.

The value of the household's resources shall not be considered for the purpose of determining eligibility for assistance.

### **3.752.25 Vulnerability [Rev. eff. 11/1/13]**

A. A household shall be vulnerable in order to qualify for ~~Basic Program~~ HEATING FUEL ASSISTANCE PROGRAM benefits. Vulnerability shall mean the household must be RESPONSIBLE FOR THE affected by the rising costs of home heating as defined below:

1. The household is paying home heating costs directly to a vendor and is subject to home heating cost increases. ~~or,~~

2. The household is living in non-subsidized housing and is paying home heating costs either in the form of rent or as a separate charge in addition to rent. ~~or,~~

3. The household resides in subsidized housing as defined in the "Definitions" Section of these rules; and, 1) the unit has an individual meter which identifies specific heating usage of that unit and the household is subject to increased cost for home heating, or 2) the tenant is subject to a heating surcharge assessed by means other than an individual meter. Such surcharges may include percentage fees assessed to the tenant for home heating. Under no circumstances shall rental costs be assumed to be subject to change due to an increase in home heating costs unless otherwise verified in writing by the county department.
4. The applicant household in a residence where more than one household resides shall be considered vulnerable if the applicant household contributes toward the total expenses of the residence. These expenses include, but are not limited to, shelter and utilities.
5. The applicant household must live in a traditional dwelling.

B. Households in the following living arrangements shall not be considered to be vulnerable:

1. Institutional group care facilities, public or private, such as nursing homes, foster care homes, group homes, alcoholic treatment centers, or other such living arrangements where the provider is liable for the costs of shelter and home heating, in part or in full, on behalf of such individuals;
2. Room and board, bed and breakfast;
3. Correctional facilities;
4. Dormitory, fraternity or sorority house;
5. Subsidized housing as defined in the "Definitions" section of these rules which does not have an individual check meter for heat for each unit or which cannot provide other evidence of responsibility for paying home heating surcharges;
6. Any applicant, or applicant household who is considered homeless or resides in non-traditional dwellings;
7. COMMERCIAL PROPERTIES THAT ALSO SERVE AS THE CLIENT'S DWELLING;
8. HOTELS, UNLESS PROOF THAT THE HOUSEHOLD HAS LIVED OR WILL LIVE IN THE HOTEL CONTINUOUSLY FOR THIRTY (30) CALENDAR DAYS AT THE TIME OF APPLICATION AND THAT HEAT IS INCLUDED IN RENT. PROOF MAY BE SHOWN BY PROVIDING A MONTHLY STATEMENT, BILLING STATEMENT OR RECEIPT INDICATING THE MONTHLY ARRANGEMENT.

Landlords or other providers of shelter shall not be considered to be vulnerable unless they meet the definition of household and the eligibility requirements of the ~~Basic Program~~ HEATING FUEL ASSISTANCE PROGRAM.

Vulnerability shall be verified for all applicant households as defined in these rules.

~~3.752.26 Residency Requirements [Rev. eff. 9/1/11]~~

~~Applicant households must meet the state residency requirements as contained in this rule manual. The household must reside at the address for which it applied to receive LEAP benefits.~~

~~3.752.27 Citizenship – Lawful Presence Requirements [Rev. eff. 9/1/11]~~

~~The applicant must meet the lawful presence in the United States requirements as contained in Section 3.140 of this rule manual to be considered a household member, except that there is no requirement regarding length of residency in the United States.~~

~~An applicant who does not meet lawful presence requirements or a household member who does not meet citizenship requirements shall not be included as a household member; however, all countable income of this individual shall be counted as part of the household's total income. The household's application shall not be denied due to lack of documentation regarding citizenship or lawful presence requirements if there are other household members who meet the citizenship requirements (i.e., minors born in the United States).~~

### **3.752.26 ~~3.752.28~~ Mandatory Weatherization [Rev. eff. 9/1/11]**

Households approved to receive a LEAP benefit must agree to have their dwelling weatherized if contacted by a state-authorized weatherization agency. Failure to permit or complete weatherization may result in denial of LEAP benefits for the following year.

#### **A. Exemptions**

1. Households containing a member(s) whose mental or physical health could be exacerbated by weatherization shall be exempt.
2. A household whose landlord refuses to allow weatherization shall not have benefits denied.
3. The local weatherization agency shall fully document the circumstances permitting the exemption.

#### **B. Households Who Refuse Weatherization**

1. Households who refuse or terminate weatherization before completion shall not be approved for LEAP benefits for the following year and a LEAP denial hold shall be placed on the household at that address by the State LEAP office. The hold can only be removed by the State LEAP office.
2. If the household has moved to another address that has been weatherized, the household may be approved for a LEAP benefit if otherwise eligible. If the new dwelling is not already weatherized, weatherization must be completed before approved for LEAP.
3. If a denied household subsequently allows the dwelling to be weatherized or weatherization completed, the household must reapply and, as long as other eligibility criteria are met, may be approved for LEAP benefits after notification from the local weatherization agency that the weatherization is completed.

#### **C. State Weatherization Office Responsibilities**

1. Assure that standards, as delineated in Sections A and B above, are applied uniformly and equitably.
2. Notify the state LEAP office by September 30th of all households who refuse weatherization.
3. Notify households who refuse weatherization, by first-class mail, that their refusal may result in denial of LEAP benefits for the following year.
4. Weatherization shall be completed as soon as possible on dwellings where the household previously refused or didn't complete weatherization and subsequently allows the dwelling to be weatherized.

### **3.752.27 MANDATORY CRISIS INTERVENTION PROGRAM (CIP) INSPECTION**

HOUSEHOLDS THAT RECEIVED ASSISTANCE FROM THE CRISIS INTERVENTION PROGRAM (CIP) MUST AGREE TO HAVE AN INSPECTION OF THE WORK PERFORMED, TO ENSURE THAT THE EQUIPMENT IS SAFE, WHEN CONTACTED BY A STATE-AUTHORIZED AGENCY. FAILURE TO

PERMIT THE INSPECTION MAY RESULT IN DENIAL OF LEAP BENEFITS FOR THE FOLLOWING YEAR.

A. EXEMPTIONS

1. HOUSEHOLDS CONTAINING A MEMBER(S) WHOSE MENTAL HEALTH CONCERNS COULD BE EXACERBATED BY PRESENCE OF THE INSPECTOR SHALL BE EXEMPT.
2. A HOUSEHOLD WHOSE LANDLORD REFUSES TO ALLOW THE INSPECTOR IN THE PROPERTY SHALL NOT HAVE BENEFITS DENIED.

B. HOUSEHOLDS WHO REFUSE CIP INSPECTION

1. HOUSEHOLDS WHO REFUSE TO ALLOW THE INSPECTION SHALL NOT BE APPROVED FOR LEAP BENEFITS FOR THE FOLLOWING YEAR AND A LEAP DENIAL HOLD SHALL BE PLACED ON THE HOUSEHOLD AT THAT ADDRESS BY THE STATE LEAP OFFICE. THE HOLD CAN ONLY BE REMOVED BY THE STATE LEAP OFFICE.
2. IF THE HOUSEHOLD HAS MOVED TO ANOTHER ADDRESS, THE HOUSEHOLD MAY BE APPROVED FOR A LEAP BENEFIT IF OTHERWISE ELIGIBLE.
3. IF A DENIED HOUSEHOLD SUBSEQUENTLY ALLOWS THE DWELLING TO BE INSPECTED, THE HOUSEHOLD MUST REAPPLY AND, AS LONG AS OTHER ELIGIBILITY CRITERIA ARE MET, MAY BE APPROVED FOR LEAP BENEFITS AFTER NOTIFICATION FROM THE INSPECTING AGENCY THAT THE INSPECTION IS COMPLETED.

C. STATE CIP CONTRACTOR'S RESPONSIBILITIES

THE STATE CONTRACTOR WILL:

1. ASSURE THAT STANDARDS, AS DELINEATED IN SECTIONS A AND B ABOVE ARE APPLIED UNIFORMLY AND EQUITABLY.
2. NOTIFY THE STATE LEAP OFFICE BY SEPTEMBER 30TH OF EACH YEAR OF ALL HOUSEHOLDS THAT REFUSE INSPECTION.
3. NOTIFY HOUSEHOLDS THAT REFUSE INSPECTION THAT THEIR REFUSAL MAY RESULT IN DENIAL OF LEAP BENEFITS FOR THE FOLLOWING YEAR.

**3.753 (NONE)-GENERAL REQUIREMENTS FOR CITIZENSHIP AND LAWFUL PRESENCE**

**3.753.1 CITIZENSHIP AND ALIEN STATUS [REV. EFF. 10/1/88]**

THE FOLLOWING ARE CITIZENS OF THE UNITED STATES AND ARE GENERALLY ELIGIBLE TO RECEIVE SOCIAL SERVICES AND PUBLIC ASSISTANCE.

- A. PERSONS BORN IN THE UNITED STATES, PUERTO RICO, GUAM, VIRGIN ISLANDS (U.S.), AMERICAN SAMOA, OR SWAIN'S ISLAND;
- B. PERSONS WHO HAVE BECOME CITIZENS THROUGH THE NATURALIZATION PROCESS;
- C. PERSONS BORN TO U.S. CITIZENS OUTSIDE THE UNITED STATES WITH APPROPRIATE DOCUMENTATION.

**3.753.11 VERIFICATION OF CITIZENSHIP IN THE UNITED STATES [REV. EFF. 1/1/09]**

DOCUMENTS THAT ARE ACCEPTABLE AS VERIFICATION OF CITIZENSHIP CAN BE FOUND AT 1 CCR 201.17, ATTACHMENT A.

**3.753.111 VERIFICATION OF QUESTIONABLE CITIZENSHIP INFORMATION [REV. EFF. 1/1/09]**

THE FOLLOWING SHALL BE USED IN CONSIDERING QUESTIONABLE STATEMENT(S) OF CITIZENSHIP FROM APPLICANT:

- A. THE CLAIM OF CITIZENSHIP IS INCONSISTENT WITH STATEMENTS MADE BY THE APPLICANT, OR WITH OTHER INFORMATION ON THE APPLICATION, OR ON PREVIOUS APPLICATIONS.
- B. THE CLAIM OF CITIZENSHIP IS INCONSISTENT WITH INFORMATION RECEIVED FROM ANOTHER RELIABLE SOURCE.

APPLICATION OF THE ABOVE CRITERIA BY THE ELIGIBILITY WORKER MUST NOT RESULT IN DISCRIMINATION BASED ON RACE, RELIGION, ETHNIC BACKGROUND OR NATIONAL ORIGIN, AND GROUPS SUCH AS MIGRANT FARM WORKERS OR NATIVE AMERICANS SHALL NOT BE TARGETED FOR SPECIAL VERIFICATION. THE ELIGIBILITY WORKER SHALL NOT RELY ON A SURNAME, ACCENT, OR APPEARANCE THAT SEEMS FOREIGN TO FIND A CLAIM TO CITIZENSHIP QUESTIONABLE. NOR SHALL THE ELIGIBILITY WORKER RELY ON A LACK OF ENGLISH SPEAKING, READING OR WRITING ABILITY AS GROUNDS TO QUESTION A CLAIM TO CITIZENSHIP.

**3.753.12 VERIFICATION OF LAWFUL PRESENCE IN THE UNITED STATES [REV. EFF. 2/1/12]**

PURSUANT TO SECTION 24-76.5-103, COLORADO REVISED STATUTES (C.R.S.), VERIFICATION OF LAWFUL PRESENCE IN THE UNITED STATES, IS REQUIRED FOR APPLICANTS OF STATE OR LOCAL BENEFITS, AND FEDERAL BENEFITS PROVIDED BY THE COLORADO DEPARTMENT OF HUMAN SERVICES OR BY THE COUNTY DEPARTMENTS OF HUMAN/SOCIAL SERVICES UNDER THE SUPERVISION OF THE STATE DEPARTMENT.

- A. FOR PURPOSES OF THIS SECTION:

"AFFIDAVIT" MEANS A STATE PRESCRIBED FORM WHEREIN AN APPLICANT ATTESTS, SUBJECT TO THE PENALTIES OF PERJURY, THAT HE/SHE IS LAWFULLY PRESENT IN THE UNITED STATES. AN AFFIDAVIT NEED NOT BE NOTARIZED.

"APPLICANT" MEANS A NATURAL PERSON EIGHTEEN YEARS OF AGE OR OLDER WHO SUBMITS AN APPLICATION TO RECEIVE A STATE OR LOCAL PUBLIC BENEFIT, OR A FEDERAL PUBLIC BENEFIT, ON HIS OR HER OWN BEHALF.

"APPLICATION" MEANS AN INITIAL OR RE- APPLICATION FOR BENEFITS.

"FEDERAL PUBLIC BENEFITS" HAS THE SAME MEANING AS PROVIDED IN 8 U.S.C. SECTION 1611; NO LATER AMENDMENTS OR EDITIONS OF THIS SECTION ARE INCORPORATED. COPIES MAY BE AVAILABLE FOR INSPECTION DURING REGULAR BUSINESS HOURS BY CONTACTING COLORADO DEPARTMENT OF HUMAN SERVICES, FOOD AND ENERGY ASSISTANCE DIVISION, 1575 SHERMAN STREET, DENVER, COLORADO 80203, OR ANY STATE PUBLICATIONS LIBRARY.

"PRODUCE" MEANS TO PROVIDE FOR INSPECTION EITHER: 1) AN ORIGINAL OR 2) A TRUE AND COMPLETE COPY OF THE ORIGINAL DOCUMENT. A DOCUMENT MAY BE PRODUCED EITHER IN PERSON OR BY MAIL.

"STATE OR LOCAL PUBLIC BENEFITS" HAS THE SAME MEANING AS PROVIDED IN 8 U.S.C. 1621; NO LATER AMENDMENTS OR EDITIONS OF THIS SECTION ARE INCORPORATED. COPIES MAY BE AVAILABLE FOR INSPECTION DURING REGULAR BUSINESS HOURS BY CONTACTING THE COLORADO DEPARTMENT OF HUMAN

SERVICES, FOOD AND ENERGY ASSISTANCE DIVISION, 1575 SHERMAN STREET,  
DENVER, COLORADO 80203, OR ANY STATE PUBLICATIONS LIBRARY.

**B. IN ORDER TO VERIFY HIS OR HER LAWFUL PRESENCE IN THE UNITED STATES, AN  
APPLICANT MUST:**

**1. PRODUCE AND PROVIDE:**

- a. A VALID COLORADO DRIVER'S LICENSE OR A COLORADO IDENTIFICATION  
CARD ISSUED PURSUANT TO ARTICLE 2 OF TITLE 42, C.R.S.; OR,
- b. A UNITED STATES MILITARY CARD OR MILITARY DEPENDENT'S  
IDENTIFICATION CARD; OR,
- c. A UNITED STATES COAST GUARD MERCHANT MARINER CARD; OR,
- d. A NATIVE AMERICAN TRIBAL DOCUMENT; OR,
- e. ANY OTHER DOCUMENT AUTHORIZED BY RULES ADOPTED BY THE  
DEPARTMENT OF REVENUE (1 CCR 201-17); OR,
- f. THOSE APPLICANTS WHO CANNOT PRODUCE ONE OF THE REQUIRED  
DOCUMENTS MAY DEMONSTRATE LAWFUL PRESENCE BY BOTH  
EXECUTING THE AFFIDAVIT AND EXECUTING A REQUEST FOR WAIVER.  
THE REQUEST FOR WAIVER MUST BE PROVIDED TO THE COLORADO  
DEPARTMENT OF REVENUE IN PERSON, BY MAIL, OR ONLINE, AND MUST  
BE ACCOMPANIED BY ALL DOCUMENTS THE APPLICANT CAN PRODUCE  
TO PROVE LAWFUL PRESENCE. A REQUEST FOR A WAIVER CAN BE  
PROVIDED TO THE DEPARTMENT OF REVENUE BY AN APPLICANT  
REPRESENTATIVE.

ONCE APPROVED BY THE DEPARTMENT OF REVENUE, THE WAIVER IS  
ASSUMED TO BE PERMANENT, BUT MAY BE RESCINDED AND  
CANCELLED IF, AT ANY TIME, THE DEPARTMENT OF REVENUE BECOMES  
AWARE OF THE APPLICANT'S VIOLATION OF IMMIGRATION LAWS. IF THE  
WAIVER IS RESCINDED AND CANCELLED, THE APPLICANT HAS THE  
OPPORTUNITY TO APPEAL.

THE COUNTY DEPARTMENT IS RESPONSIBLE FOR VERIFYING THAT THE  
APPLICANT IS THE SAME INDIVIDUAL INDICATED AS BEING LAWFULLY  
PRESENT THROUGH THE WAIVER.

**2. EXECUTE AN AFFIDAVIT SAYING THAT:**

- a. HE OR SHE IS A UNITED STATES CITIZEN OR LEGAL PERMANENT RESIDENT;  
OR,
- b. HE OR SHE IS OTHERWISE LAWFULLY PRESENT IN THE UNITED STATES  
PURSUANT TO FEDERAL LAW.

**3.753.13 LEGAL IMMIGRANT**

"LEGAL IMMIGRANT" MEANS AN INDIVIDUAL WHO IS NOT A CITIZEN OR NATIONAL OF THE  
UNITED STATES AND WHO WAS LAWFULLY ADMITTED TO THE UNITED STATES BY THE  
CITIZENSHIP AND IMMIGRATION SERVICES (CIS) AS AN ACTUAL OR PROSPECTIVE  
PERMANENT RESIDENT OR WHOSE PHYSICAL PRESENCE IS KNOWN AND ALLOWED BY THE CIS.

**3.753.14 DOCUMENTATION OF LEGAL IMMIGRANT**



AN ALIEN CONSIDERED A LEGAL IMMIGRANT WILL NORMALLY POSSESS ONE OF THE FOLLOWING FORMS PROVIDED BY THE CITIZENSHIP AND IMMIGRATION SERVICES (CIS) AS VERIFICATION:

- A. I-94 ARRIVAL/DEPARTURE RECORD.
- B. I-551: RESIDENT ALIEN CARD (I-551).
- C. FORMS I-688B OR I-766 EMPLOYMENT AUTHORIZATION DOCUMENT.
- D. A LETTER FROM CIS INDICATING A PERSON'S STATUS.
- E. LETTER FROM THE U.S. DEPT. OF HEALTH AND HUMAN SERVICES (HHS) CERTIFYING A PERSON'S STATUS AS A VICTIM OF A SEVERE FORM OF TRAFFICKING.
- F. IRAQI AND AFGHAN INDIVIDUALS WHO WORKED AS TRANSLATORS FOR THE U.S. MILITARY, OR ON BEHALF OF THE U.S. GOVERNMENT, OR FAMILIES OF SUCH INDIVIDUALS; AND HAVE BEEN ADMITTED UNDER A SPECIAL IMMIGRANT VISA (SIV) WITH SPECIFIC VISA CATEGORIES OF SI1, SI2, SI3, SI6, SI7, SI9, SQ1, SQ2, SQ3, SQ6, SQ7, OR SQ9. ELIGIBILITY LIMITATIONS ARE OUTLINED IN SECTION 3.710.31, I.
- G. ANY OF THE DOCUMENTS PERMITTED BY THE COLORADO DEPARTMENT OF REVENUE RULES FOR EVIDENCE OF LAWFUL PRESENCE (1 CCR 201-17, ATTACHMENT B).

**3.753.15 VERIFICATION WITH SYSTEMATIC ALIEN VERIFICATION OF ENTITLEMENT (SAVE) PROGRAM**

LEGAL IMMIGRANTS APPLYING FOR PUBLIC ASSISTANCE MUST PRESENT DOCUMENTATION FROM CIS SHOWING THE APPLICANT'S STATUS. ALL DOCUMENTS MUST BE VERIFIED THROUGH SAVE (SYSTEMATIC ALIEN VERIFICATION FOR ENTITLEMENTS) TO DETERMINE THE VALIDITY OF THE DOCUMENT.

**3.753.16 QUALIFIED ALIEN**

A "QUALIFIED ALIEN" IS DEFINED AS FOLLOWS:

- A. AN ALIEN LAWFULLY ADMITTED FOR PERMANENT RESIDENCE;
- B. AN ALIEN PAROLED INTO THE UNITED STATES UNDER THE IMMIGRATION AND NATURALIZATION ACT (INA) FOR A PERIOD OF AT LEAST ONE YEAR;
- C. AN ALIEN GRANTED CONDITIONAL ENTRY PURSUANT TO SECTION 203(A)(7) OF THE INA PRIOR TO APRIL 1, 1980;
- D. A REFUGEE;
- E. AN ASYLEE;
- F. AN ALIEN WHOSE DEPORTATION IS BEING WITHHELD;
- G. A CUBAN OR HAITIAN ENTRANT;
- H. A VICTIM OF SEVERE FORM OF TRAFFICKING WHO HAS BEEN CERTIFIED AS SUCH BY THE U.S. DEPT. OF HEALTH AND HUMAN SERVICES (HHS);
- I. IRAQIS AND AFGHANS GRANTED SPECIAL IMMIGRANT VISA STATUS;
- J. AN ALIEN WHO HAS BEEN BATTERED OR SUBJECTED TO EXTREME CRUELTY IN THE U.S. BY A FAMILY MEMBER;

- K. AN ALIEN ADMITTED TO THE U.S. AS AN AMERASIAN IMMIGRANT;
- L. AN INDIVIDUAL WHO WAS BORN IN CANADA AND POSSESSES AT LEAST FIFTY PERCENT (50%) AMERICAN INDIAN BLOOD OR IS A MEMBER OF AN INDIAN TRIBE;

### **3.753.17 ALIENS AND TEMPORARY RESIDENTS NOT ELIGIBLE FOR ASSISTANCE**

THE FOLLOWING INDIVIDUALS ARE NOT ELIGIBLE FOR PUBLIC ASSISTANCE OR SOCIAL SERVICES PROGRAMS:

- A. AN ALIEN WITH NO STATUS VERIFICATION FROM THE U.S. CITIZENSHIP AND IMMIGRATION SERVICE;
- B. AN ALIEN GRANTED A SPECIFIC VOLUNTARY DEPARTURE DATE;
- C. AN ALIEN APPLYING FOR A STATUS; OR,
- D. A CITIZEN OF FOREIGN NATIONS RESIDING TEMPORARILY IN THE UNITED STATES ON THE BASIS OF VISAS ISSUED TO PERMIT EMPLOYMENT, EDUCATION, OR A VISIT.

### **3.753.18 CITIZENSHIP - LAWFUL PRESENCE REQUIREMENTS**

AN APPLICANT WHO DOES NOT MEET LAWFUL PRESENCE REQUIREMENTS OR A HOUSEHOLD MEMBER WHO DOES NOT MEET CITIZENSHIP REQUIREMENTS SHALL NOT BE INCLUDED AS A HOUSEHOLD MEMBER; HOWEVER, ALL COUNTABLE INCOME OF THIS INDIVIDUAL SHALL BE COUNTED AS PART OF THE HOUSEHOLD'S TOTAL INCOME. THE HOUSEHOLD'S APPLICATION SHALL NOT BE DENIED DUE TO LACK OF DOCUMENTATION REGARDING CITIZENSHIP OR LAWFUL PRESENCE REQUIREMENTS IF THERE ARE OTHER HOUSEHOLD MEMBERS WHO MEET THE CITIZENSHIP REQUIREMENTS (I.E., MINORS BORN IN THE UNITED STATES).

### **3.753.19 ALTERNATE VERIFICATION OF LAWFUL PRESENCE**

IN ORDER TO VERIFY THE APPLICANTS LAWFUL PRESENCE IN THE UNITED STATES, A COUNTY DEPARTMENT CAN USE A PRINT OUT FROM THE DEPARTMENT OF MOTOR VEHICLE'S DATABASE DOCUMENTING A VALID STATUS OF THE APPLICANT'S COLORADO DRIVER'S LICENSE OR IDENTIFICATION AS VERIFICATION, IF IT INDICATES THAT THE APPLICANT IS LAWFULLY PRESENT.

### **3.753.2 RESIDENCE**

#### **3.753.21 COLORADO RESIDENCY**

TO BE ELIGIBLE FOR ASSISTANCE, AN APPLICANT SHALL BE A RESIDENT OF COLORADO AT THE TIME APPLICATION IS MADE. THERE SHALL BE NO DURATIONAL RESIDENCE REQUIREMENT. AN APPLICANT OR RECIPIENT WHO ESTABLISHES INTENT TO REMAIN IN COLORADO SHALL, FOR PUBLIC ASSISTANCE PURPOSES, BE CONSIDERED A CURRENT RESIDENT. "INTENT TO REMAIN" MAY BE ESTABLISHED BY ANY OR ALL OF THE FOLLOWING:

- A. ACQUIRING BY PURCHASE, RENTAL, OR OTHER ARRANGEMENTS HOUSING FACILITIES USED AS A HOME;
- B. HOUSEHOLD EFFECTS, EQUIPMENT, AND PERSONAL BELONGINGS BEING LOCATED IN THE HOME OR BEING IN TRANSIT;
- C. SECURING EMPLOYMENT OR ENGAGING IN OTHER SELF-SUPPORTING ACTIVITY BASED IN COLORADO;
- D. PARENTS ENTERING CHILDREN IN LOCAL SCHOOLS;

- E. COMPLETING THE AFFIDAVIT OF INTENT – RESIDENCE FORM; AND/OR;
- F. ENTERING COLORADO WITH A JOB COMMITMENT OR IN SEARCH OF EMPLOYMENT IN COLORADO.

### **3.753.22 RESIDENCY REQUIREMENTS**

APPLICANT HOUSEHOLDS MUST MEET THE STATE RESIDENCY REQUIREMENTS AS CONTAINED IN THESE RULES. THE HOUSEHOLD MUST RESIDE AT THE ADDRESS FOR WHICH IT APPLIED TO RECEIVE LEAP BENEFITS.

### **3.754 REASONS FOR DENIAL OF ASSISTANCE**

"DENIAL" MEANS THAT AN APPLICATION SHALL BE DENIED WHEN THE APPLICANT FAILS TO MEET THE ELIGIBILITY REQUIREMENTS OF THE PROGRAM. A DENIAL ALSO MAY BE ASSESSED ON THE BASIS OF SUCH FACTORS AS, BUT NOT LIMITED TO:

- A. REFUSAL OF THE APPLICANT TO FURNISH INFORMATION NECESSARY TO DETERMINE ELIGIBILITY;
- B. APPLICANT UNWILLING TO HAVE THE COUNTY DEPARTMENT CONTACTS A COLLATERAL SOURCE TO SECURE INFORMATION AND REFUSAL OF THE APPLICANT TO SIGN THE STATE-APPROVED AUTHORIZATION FOR RELEASE OF INFORMATION FORM;
- C. APPLICANT DOES NOT SUPPLY INFORMATION OR OTHERWISE FAILS TO COOPERATE WITH THE COUNTY DEPARTMENT WITHIN THE STANDARDS OF PROMPTNESS TIME LIMITS AND AFTER HAVING RECEIVED NOTIFICATION OF THE REASON FOR DELAY;
- D. APPLICANT MOVES TO AN UNKNOWN ADDRESS BEFORE DETERMINATION OF ELIGIBILITY HAS BEEN COMPLETED;
- E. REFUSAL OF A THIRD PARTY TO PROVIDE DOCUMENTATION OF ESSENTIAL VERIFICATIONS.

#### **3.754.1 FACTORS FOR DENIAL [Rev. eff. 11/1/13]**

Any of the following factors shall be the basis for the denial of an applicant household:\*

- A. Excess income; 3.752.22 (04).
- B. Not vulnerable to rising home heating costs; 3.752.25 (03).
- C. A household not meeting citizenship/lawful presence requirements; 3.753.11 ~~3.752.27~~ (13).
- D. A household is a duplicate household or was previously approved as part of another household; 3.751.1, "Household" (06).
- E. The household has voluntarily withdrawn its application; 3.756.18 (09).
- F. The household has received ~~Basic Program~~ HEATING FUEL ASSISTANCE PROGRAM benefits from another county; 3.756.17 (10).
- G. The household has failed to provide complete application information or required verification; 3.756.12 (11).
- H. The household is not a resident of Colorado; 3.752.26 (07).
- I. The household failed to sign the application form; 3.751.1, "Completed Application", C (21).

- J. The household filed an application outside of the application period; 3.752.1 (14).
- K. Unable to locate the applicant; 3.756.19 (25).
- L. Refused weatherization services from a state weatherization agency; 3.752.28 (26).
- M. The applicant failed to provide valid identification; 3.753.11, B, 1 ~~3.140.11, B, 1~~ (05).
- N. The applicant failed to provide an affidavit; 3.753.11, B, 2 ~~3.140.11, B, 2~~ (08).
- O. The applicant failed to provide valid identification; 3.753.11, B, 1 ~~3.140.11, B, 1~~, and the applicant failed to provide an affidavit; 3.753.11, B, 2 ~~3.140.11, B, 2~~ (18).
- P. Non-traditional dwelling; 3.751.1 (23).
- Q. The household does not reside at the address for which it applied to receive benefits; 3.752.26 (24).
- R. LEAP can only assist with the primary heating fuel for the primary heating source; 3.751.1 (22).
- S. The applicant household refused a bulk fuel delivery, thereby relinquishing the benefit; 3.751.54 (28).
- T. THE HOUSEHOLD REFUSED INSPECTION OF THE CRISIS INTERVENTION PROGRAM WORK;  
3.752.27 (27).

(\*Note: The rule citation is shown followed by the denial reasons which are to be used when coding the worksheet and data entering into the computer system.)

### **3.754.11 APPROPRIATE REASON FOR DENIAL**

THE COUNTY DEPARTMENT SHALL USE THE MOST APPROPRIATE REASON FOR DENIAL; IF THE COUNTY DEPARTMENT IS UNCLEAR AS TO THE MOST APPROPRIATE REASON FOR DENIAL, IT SHALL CONSULT THE STATE DEPARTMENT.

### **3.754.12 NOTICE OF DENIAL**

A NOTICE OF DENIAL SHALL BE PROVIDED TO THE APPLICANT WITHIN SEVEN (7) CALENDAR DAYS OF THE DECISION; THE STATE WILL PROVIDE THE NOTICES TO THE COUNTY DEPARTMENT FOR DISTRIBUTION.

### **3.755.11 VERIFICATION IN DETERMINING INITIAL ELIGIBILITY AND PAYMENT AMOUNT [Rev. eff. 9/1/11]**

Income, estimated home heating costs, and vulnerability shall be verified in determining initial eligibility and/or payment amount. If a household applied during the prior LEAP program year and there are no changes in the applicant, address and fuel provider, vulnerability and lawful presence (provided that IDs are valid in accordance with Section 3.753 ~~3.140~~) may be copied from the prior year case file and provided in the current case file.

### **3.755.12 CONFLICTING INFORMATION [Rev. eff. 10/1/00]**

If the county obtains information which would affect the initial determination of an applicant household's eligibility or payment level and which is different than information provided by the applicant, the county shall inform the applicant and provide an opportunity for response or explanation. Eligibility shall be determined by using the correct information. In these cases, an applicant who meets eligibility criteria shall not be denied because the applicant provided information that was different than information subsequently obtained by the county. Information used to determine eligibility and benefit level shall be documented IN THE SYSTEM. However, in appropriate cases, the counties may institute fraud proceedings.

### **3.755.13 CASE RECORD [Rev. eff. 11/1/13]**

The case record shall contain at a minimum:

- A. The application and any other supplemental forms the applicant is required to submit;
- B. Documentation of all verification as required in these rules;
- C. Written explanation on the report of contact of any discrepancy between information contained on the application and information in the LEAP system;
- D. Calculations used to compute income, documentation of the source of estimated home heating costs and any other written notations on the report of contact necessary to provide a clear and adequate record of action taken on the case. The eligibility workers shall date and initial each entry.
- E. Documentation of all written notices sent to the applicant household requesting missing information and/or verification necessary to determine eligibility and/or payment level.
- F. Complete documentation in emergency or expedited cases including when, to whom, and how a vendor and/or client contact is made.
- G. ALL HISTORICAL DATA USED MUST BE PRESENT IN THE FILE, AND DOCUMENTED IN THE REPORT OF CONTACT (ROC).

### **3.755.14 WRITTEN POLICY**

EACH COUNTY DEPARTMENT SHALL DEVELOP A WRITTEN POLICY STIPULATING THE ORDER OF THE CASE RECORD, AND THE CONTENT OF ALL RECORDS IN THAT COUNTY DEPARTMENT SHALL BE FILED ACCORDING TO THAT COUNTY DEPARTMENT POLICY. THE COUNTY DEPARTMENT MUST STIPULATE THAT CASE RECORD MATERIAL MUST BE FASTENED TO THE FILE FOLDER IN ORDER TO SECURE THE INFORMATION AND MAINTAIN THE FILING ORDER.

### **3.755.15 COUNTY STORAGE OF RECORDS**

THE COUNTY DEPARTMENT SHALL BE RESPONSIBLE FOR THE PROVISION OF A SAFE PLACE FOR STORAGE OF CASE RECORDS AND OTHER CONFIDENTIAL MATERIAL. IF A COUNTY DEPARTMENT SHARES BUILDING SPACE WITH OTHER COUNTY OFFICES, LOCKED FILES TO STORE CASE MATERIAL SHALL BE USED. JANITORS AND OTHER MAINTENANCE PERSONNEL SHALL BE INSTRUCTED CONCERNING THE CONFIDENTIAL NATURE OF INFORMATION.

### **3.755.16 STATE AUTHORITY REQUIRED FOR REMOVAL OF CASE RECORDS**

CASE RECORDS ARE THE PROPERTY OF AND SHALL BE RESTRICTED TO USE BY THE STATE DEPARTMENT AND COUNTY DEPARTMENT. ONLY ON AUTHORITY OF THE STATE DEPARTMENT MAY CASE RECORDS BE REMOVED FROM THE OFFICE OF THE COUNTY DEPARTMENT.

### **3.755.17 ARCHIVING CASE FILES**

THE COUNTY DEPARTMENT SHALL ARCHIVE THREE (3) PROGRAM YEARS PLUS THE CURRENT PROGRAM YEAR FILES AND MAKE THEM AVAILABLE TO THE STATE UPON REQUEST.

## **3.755.2 VERIFYING INCOME**

### **3.755.21 Adequate Verification of Income [Rev. eff. 11/1/13]**

The case record shall contain adequate verification of income. Adequate verification is defined as any of the following:

- A. Unearned income, such as pensions or retirement income, veteran's benefits, workman's compensation, unemployment or supplemental security income shall be verified in writing, such as an award letter or cost of living adjustment (COLA) letter, issued after the last general increase for that type of assistance, which shows the gross amount before any deductions. Acceptable verification includes documentation from federal/state/system inquiries (i.e., a copy of applicable CBMS screens). Copies of bank deposits or checks shall not be adequate verification of gross income.
- B. Verification of child support income shall include at a minimum:
1. Verification through the Automated Child Support Enforcement System (ACSES); or,
  2. Verification through the Family Support Registry (FSR); or,
  3. Copies of checks, money orders or other document(s) including written statements or affidavits from the non-custodial parent that documents the income paid directly to the custodial parent.
  4. An exception shall be made in cases of domestic violence defined in Section 3.602.1 of this manual. Client declaration shall be sufficient in such cases.
- C. Social Security income may be verified by an award letter, issued by the social security administration, after the last general increase. Acceptable verification includes documentation from federal/state/system inquiries (i.e., a copy of applicable CBMS screens). Gross social security income includes income before any deductions for Medicare or other medical insurance. Copies of bank deposit or checks shall not be adequate verification of gross social security income.
- D. Earned ongoing income shall be verified for at least four (4) weeks of the EIGHT (8) weeks prior to the application date and shall consist of pay stubs or statements from employers which state the period worked, pay frequency and the actual gross income earned.
- E. Public assistance income shall be verified through the most current active county records. The Low-Income Energy Assistance Program case record must specifically reference the source document of the income information via federal and/or state system inquiries (i.e., a copy of applicable CBMS screens).
- F. Verification of income other than public assistance income of applicant households may be obtained through the most current active county records. The Low-Income Energy Assistance Program case record must specifically reference the source document of the income verification (i.e., source document name and/or number and document date).
- G. Verification may be obtained by collateral contact, provided that the case record contains complete information on the name and title of the person contacted, the name of the employer or agency, the period of employment and the actual gross income received, earned or unearned.
- H. In verifying zero income, the county shall examine income of all adult members of the household by USING THE DEPARTMENT OF LABOR AND EMPLOYMENT (DOLE) VERIFICATION SYSTEM AND one or more of the following methods:
1. Obtain a reasonable explanation in writing from the household on how they meet living expenses;
  2. Verify ~~eligibility for unemployment benefits or verify~~ final date of employment with last employer;
  3. Colorado Benefits Management System (CBMS).
- I. Verification of self-employment income shall include, at a minimum:

1. Profit and loss statements, i.e., self-employment ledger; and,
2. Receipts for business-related expenses are required in order to be considered as deductions;
  - a. RENT OR MORTGAGE IS NOT AN ALLOWABLE EXPENSE WHEN THE APPLICANT IS OPERATING A BUSINESS FROM HIS OR HER RESIDENCE.
  - b. UTILITIES, DATA AND PHONE BILLS INCLUDING CELL PHONES ARE NOT ALLOWABLE EXPENSES WHEN THE ACCOUNT IS IN THE NAME OF AN INDIVIDUAL.
  - c. FUEL EXPENSES ARE ALLOWABLE FOR VEHICLES USED SOLELY FOR BUSINESS AND FOR INDIVIDUALS WHO USE PERSONAL VEHICLES THAT ARE DIRECTLY RELATED TO THE WORK AND NECESSARY TO CONDUCT BUSINESS. THE COUNTY MAY ACCEPT GAS RECEIPTS AND/OR DOCUMENTATION OF MILEAGE FOR THOSE VEHICLES THAT ARE NOT USED SOLELY FOR BUSINESS. IF USING A MILEAGE LOG, THE DEDUCTION IS THEN BASED ON THE NUMBER OF MILES TIMES THE COUNTY'S ESTABLISHED REIMBURSEMENT RATE.

J. OWNERS OF LLC'S OR S-CORPS ARE CONSIDERED EMPLOYEES OF THE CORPORATION AND THEREFORE CANNOT BE CONSIDERED SELF-EMPLOYED. BECAUSE THEY ARE NOT CONSIDERED SELF-EMPLOYED, THEY ARE NOT ENTITLED TO THE EXCLUSION OF ALLOWABLE COSTS OF PRODUCING SELF-EMPLOYMENT INCOME. THE INCOME FROM THESE TYPES OF CORPORATIONS SHOULD BE COUNTED AS REGULAR EARNED INCOME, NOT SELF EMPLOYMENT INCOME.

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### **3.755.43 Wood Permits [Rev. eff. 6/1/09]**

Applicants who cut their own wood shall be required to provide a copy of their wood cutting permit. If a permit is not available, the applicants must provide a written and signed statement that they cut their own wood, plus documented proof that they cut it on their own land or that they have permission from the landowner.

### **3.755.44 WOOD PURCHASE**

APPLICANTS WHO USE WOOD AS THEIR PRIMARY HEATING FUEL MUST PROVIDE A RECEIPT FROM A WOOD VENDOR. RECEIPTS MUST INCLUDE THE VENDOR'S NAME, ADDRESS, TELEPHONE NUMBER, DATE AND THE NAME AND ADDRESS OF THE BUYER; IT MUST ALSO CONTAIN THE AMOUNT OF WOOD PURCHASED, THE DATE OF THE PURCHASE AND THE COST.

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### **3.756 PROCEDURES FOR PROCESSING APPLICATIONS AND NOTIFYING APPLICANT HOUSEHOLDS**

#### **3.756.1 PROCEDURES**

#### **3.756.11 Application [Rev. eff. 9/1/11]**

~~Basic Program~~ HEATING FUEL ASSISTANCE PROGRAM applicants shall submit a completed application form as defined in the "Definitions" section 3.751.1 of these rules to the county department in order to be considered for ~~Basic Program~~ HEATING FUEL ASSISTANCE PROGRAM benefits. The county department shall not require office interviews for purposes of determining eligibility.

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**3.756.2 ADVANCE PAYMENT OF THE ~~BASIC~~ PROGRAM HEATING FUEL ASSISTANCE PROGRAM BENEFIT (applicable only when a signed Vendor Agreement has not been secured) [Rev. eff. 11/1/13]**

- A. A shut-off notice or other documentation of intent to terminate heating services by the heating supplier or landlord or that termination of service has occurred; or,
- B. For households that use bulk fuel, a written declaration by the household that the fuel supply has been or will be depleted within the next two weeks and the specific amount needed to maintain heat in the home until payroll runs.
- C. For households where heat is included in rent, an eviction notice and a written statement from the landlord that the client will not be evicted for thirty (30) days if request for advance of the payment is accepted.

For purposes of advance payment, notices of denial shall advise the applicants of the reason for denial, appeal rights and procedures including, but not limited to, a hearing.

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**3.758.3 CHANGES IN HOUSEHOLD COMPOSITION AFFECTING ISSUANCE OF PAYMENT**

**3.758.31 CHANGE IN HOUSEHOLD CIRCUMSTANCES [Rev. eff. 11/1/95]**

If, prior to payment, an eligible household's circumstances change, which involves separation or divorce of a marriage or common law arrangement, and the household includes dependent children, the ~~Basic~~-Program HEATING FUEL ASSISTANCE PROGRAM payment(s) shall be provided to the parent or guardian who resides with and has the responsibility for the care of the dependent children.

If the household does not include dependent children, the ~~Basic~~-HEATING FUEL ASSISTANCE Program payment(s) shall be paid to the person listed as applicant.

**3.758.32 Death of Payee Affecting Issuance of Payment [Rev. eff. 9/1/11]**

When the payee for a ~~Basic~~-Program HEATING FUEL ASSISTANCE PROGRAM benefit dies, any payment to which the payee was entitled shall be kept available according to the following rules:

- A. The surviving spouse or other household member shall be entitled to the ~~Basic~~-HEATING FUEL ASSISTANCE Program payee's benefit provided that the surviving spouse or other household member was included as part of the ~~Basic~~-HEATING FUEL ASSISTANCE Program payee's household upon ~~Basic~~-HEATING FUEL ASSISTANCE Program eligibility determination.
- B. In the case of a single member household client payment, the payment will expunge after three hundred sixty-five (365) days. In the case of a single member household vendor payment, the vendor will follow the process outlined in the vendor agreement.

**3.758.4 PAYMENT METHODS**

**3.758.41 ~~Basic~~-HEATING FUEL ASSISTANCE Program Payment**

For an approved household which pays home heating costs directly to a fuel vendor, payment shall be made as a vendor payment, provided a written vendor agreement has been secured. The State Department shall be required to provide vendors servicing their county with an opportunity to sign the state prescribed vendor agreement. County departments shall provide vendors with applications, brochures, envelopes, and other outreach material. In cases where a written vendor agreement has not been secured, payment shall be issued directly to the eligible household.



For an approved household that pays home heating costs to a landlord, payment of the ~~Basic~~-HEATING FUEL ASSISTANCE Program payment shall be made directly to the eligible household. Under no circumstances shall a direct payment be made to a landlord.

### **3.758.42 - 3.758.45 (None)**

### **3.758.46 Vendor Payment Procedures**

A. When a direct vendor payment is made, the county department shall be required:

1. To notify each household of the amount and month such assistance is scheduled to be paid on its behalf,
2. To notify the household of the vendor to be paid on the household's behalf,
3. To contact the vendor to explain the vendor payment process, when applicable.
4. To notify each eligible household in writing of the eligible household's responsibilities to continue to pay toward the household's heating costs. Such notification shall advise the household that the ~~Basic~~-HEATING FUEL ASSISTANCE Program payment is not intended to totally pay a household's heating costs.

If the household has received a notice from the vendor to terminate services or has already had services terminated, the household is responsible to negotiate a payment arrangement with their vendor.

5. To notify the vendor in writing of each household's eligibility and projected payment amount.

B. Prior to any ~~Basic~~-HEATING FUEL ASSISTANCE Program payment being made directly to a fuel vendor on behalf of an eligible household, the following terms of agreement shall be obtained from the fuel vendor in writing and notice of the same shall be included with the ~~Basic~~-HEATING FUEL ASSISTANCE Program payment in accordance with a State prescribed form. Any revision or modification of the assurances below, necessitated by unique circumstances, shall be submitted in writing to the State Department for approval prior to execution of the vendor agreement.

C. Refer to the State approved vendor agreement for specific requirements, conditions and procedures. This agreement is available on the Colorado Department of Human Services web site AT [WWW.COLORADO.GOV/CDHS/LEAP](http://WWW.COLORADO.GOV/CDHS/LEAP).

### **3.758.47 Methodology for Calculating ~~Basic-Program~~ HEATING FUEL ASSISTANCE PROGRAM Benefits [Rev. eff. 11/1/13]**

The payment amount for an eligible ~~Basic-Program~~ HEATING FUEL ASSISTANCE PROGRAM household shall be determined in accordance with the following method:

#### Step A. Determine Estimated Home Heating Costs (EHHC)

The county department shall determine estimated home heating costs for November 1st through April 30th for the household's current residence at the time of application. The methodology for calculating estimated home heating costs is outlined below.

The county department shall determine the applicant household's estimated home heating costs as follows:

1. An applicant household's estimated home heating cost shall consist of the total actual home heating costs for the primary heating fuel for November 1st through April 30th, of the prior year's heating season. Vendors serving applicant households shall be required to supply

actual home heating costs for November 1st through April 30th of the prior year's heating season.

2. For any applicant whose home heating costs for the prior year's heating season are not available or determined by the county department to be invalid, the county department shall use the flat rate amount. The State Department shall adjust the flat rate amounts annually based on the average actual home heating costs found in the LEAP system by dwelling type for the prior year's heating season contained in the following table:

	NAT GAS	PROPANE FUEL OIL	ELECT.	WOOD	COAL	PROPANE BOTTLES	WOOD GATHERING
House, Mobile Home	\$ 492 474	\$1,282 960	\$1,227 1190	\$ 594- 781	\$ 482	\$ 384	\$ 200
Duplex, Triplex, Fourplex, Townhouse	\$ 403 386	\$1,051 852	\$ 942 949	\$ 482- 582	\$ 482	\$ 341	\$ 200
Apartment, Condominium, Hotel, CABIN	\$ 316 310	\$ 967 852	\$ 845 689	\$ 482- 582	\$ 482	\$ 341	\$ 200
Cabin, Camper, 5 <sup>th</sup> Wheel	\$ 492 381	\$1,011 745	\$ 647 964	\$ 460- 560	\$ 432	\$ 298	\$ 200

3. The State Department shall adjust the standard rates for heating costs that are included in rent annually based on the flat rate amounts adjustment contained in the following table:

	NAT GAS	PROPANE FUEL OIL	ELECTRIC	WOOD	COAL
House, Mobile Home	\$ 197- 190	\$ 513- 384	\$ 491- 476	\$ 238- 313	\$ 193
Duplex, Triplex, Fourplex, Townhouse	\$ 161- 155	\$ 420- 341	\$ 377- 380	\$ 193- 233	\$ 193
Apartment, Condominium, Hotel,	\$ 126 124	\$ 387- 341	\$ 339- 276	\$ 193- 233	\$ 193
Cabin, Camper, 5 <sup>th</sup> Wheel, RV	\$ 197 153	\$ 404- 298	\$ 259- 386	\$ 184- 224	\$ 173

#### Step B. Initial Statewide Adjustment

The state LEAP office will adjust benefit levels at the beginning of each LEAP program year based upon the projected number of leap applications to be received and the estimated level of funding. Annually, this calculation determines the percentage of the estimated home heating costs (EHC) of the applicant household to be adjusted.

#### Step C. Adjustment for electric heat

Households using electric heat will have their electric usage costs reduced to the percentage amounts listed below.

<u>HEAT PORTION OF TOTAL ELECTRIC EHC</u>	
House/mobile home	62% for heat
Townhouse / duplex / triplex / fourplex	48% for heat
Apartment, condominium, hotel, rooming house	43% for heat
Cabin, RV, 5th wheel, camper	50% for heat

Step D. Adjustment for Shared Living Arrangements

The estimated home heating costs shall be adjusted if the household shares living arrangements with other households but is determined to be a separate household as defined in the "Definitions" section of these rules. If the household shares living arrangements with other households, the estimated home heating cost shall be divided by the number of separate households sharing the living arrangements, whether or not all households sharing the living arrangements are eligible for the ~~Basic Program~~ HEATING FUEL ASSISTANCE PROGRAM.

Step E. Adjustment for Subsidized Housing Home Heating Allowance

The State Department shall adjust the amount of estimated home heating cost remaining after Step B if the household resides in subsidized housing (as defined in the "Definitions" section of these rules). A flat rate rental cost allowance for heating (\$30 per month or \$180 per heating season) shall be deducted from the remaining amount of estimated home heating costs. If the household does not live in subsidized housing, the amount remaining after Step B shall be the estimated home heating cost.

Step F. Determine ~~Basic Program~~ HEATING FUEL ASSISTANCE PROGRAM Amount

The State Department shall determine a benefit amount for each eligible household by subtracting the applicable adjustments listed above, in Steps B-E from the household's estimated home heating costs (EHC) determined in Step A, 1-3. Any eligible household will receive at least the minimum, up to and including, the maximum benefit amount established by the Department for the LEAP program year.

**3.759.11 Operation [Rev. eff. 11/1/83]**

The county department has responsibility for the operation of a county wide outreach program. The outreach program shall be operated in accordance with guidelines contained in this section. The county may opt to contract with other agencies to perform all or part of the required outreach activities. Counties must assure that outreach includes:

- A. Coordination with other agencies, organizations, and groups to facilitate the participation of potentially eligible persons with emphasis on most vulnerable (e.g., elderly, disabled, home bound, non-English speaking);
- B. Access to ~~Basic~~-HEATING FUEL ASSISTANCE Program information and application forms. Outreach staff must identify locations in the county, such as community action programs, social security offices, low income housing sites, etc., for distribution of information, taking of applications, etc., through these sites. In addition, the county must have sufficient telephone lines to ensure access to information without requiring office visits;
- C. An effective county wide information and referral system involving local agencies and organizations;
- D. A referral system to weatherization and other energy conservation programs in the county;
- E. Special efforts to meet the needs of target groups (e.g., home visits for home bound, outstationing of outreach staff, etc.). County departments shall assist disabled and elderly (as defined in the

"Definitions" Section of these rules 3.751.1) applicants in completing applications and securing the required verification;

F. Regular communications with cooperating agencies to identify concerns, problems, etc.;

G. Encourage utility companies to refer their customers to the county departments.

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# Notice of Rulemaking Hearing

**Tracking number**

2014-00902

**Department**

500,1008,2500 - Department of Human Services

**Agency**

2503 - Income Maintenance (Volume 3)

**CCR number**

9 CCR 2503-9

**Rule title**

COLORADO CHILD CARE ASSISTANCE PROGRAM

## Rulemaking Hearing

**Date**

10/03/2014

**Time**

10:00 AM

**Location**

Colorado Department of Human Services, Conference Room 4A/B, 1575 Sherman Street, Denver, CO 80203

**Subjects and issues involved**

#14-8-25-1: Implementation of Components of H.B. 14-1317 Regarding Colorado Child Care Assistance Program (CCCAP) Modifications

**Statutory authority**

26-1-107; 26-1-109; 26-1-111; 26-2-803 through 26-2-805, C.R.S. (2013), as amended by HB14-1317

## Contact information

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Title of Proposed Rule: Implementation of Components of H.B. 14-1317 Regarding Colorado Child Care Assistance Program (CCCAP) Program Modifications

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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.)*

The purpose of this rule-making package is to propose changes that implement components of House Bill 14-1317.

House Bill 14-1317 made significant changes to the Colorado Child Care Assistance Program, and included substantial funding of over \$10,000,000 appropriated and available July 1, 2014. While the work of distributing the funds is under discussion and preparation, this rule package operationalizes what the funds purchase, which are the improvements to the Colorado Child Care Assistance Program (CCCAP).

Not all of the CCCAP modifications in House Bill 14-1317 require rule-making, but those that do include:

- Extension of the period of job-search as an eligible activity from thirty (30) to sixty (60) days;
- Addition of ninety (90) days of eligibility for families whose income has risen to a level that results in their ineligibility;
- Decoupling of the parent's work schedule and the child's care schedule, allowing children to attend child care when their parent is not engaged in their eligible activity;
- Aligning, when practicable, the eligibility of the family and its authorization for care with a provider;
- A requirement that counties maintain wait lists for families that the county is unable to enroll due to financial constraints;
- Easy access to county policies and procedures for program families;
- Tiered Reimbursement rates for quality rated providers. Tiered Reimbursement provides incremental increases in reimbursement rates as a provider attains or sustains a higher level of quality rating;

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Initial Review 09/05/2014

Proposed Effective Date 12/01/2014

Final Adoption 10/03/2014

EMERGENCY Adoption N/A

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## **DOCUMENT 5**

*[Note: "Strikethrough" indicates deletion from existing rules and "all caps" indicates addition of new rules.]*

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**STATEMENT OF BASIS AND PURPOSE** (continued)

- Tiered systems of parental co-pays and county payment for absences and holidays based on the provider ratings in the State's quality rating and improvement system.

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An emergency rule-making (which waives the initial Administrative Procedure Act noticing requirements) is necessary:

<input type="checkbox"/>
<input type="checkbox"/>

to comply with state/federal law and/or

to preserve public health, safety and welfare

Explain:

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Authority for Rule:

State Board Authority: 26-1-107, C.R.S. (2013) - 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) 26-2-803 through 26-2-805, C.R.S. (2013), as amended by H.B. 14-1317 – State Board to promulgate rules related to the Colorado Child Care Assistance Program.

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Does the rule incorporate material by reference?

<input type="checkbox"/>
X

Yes

X
<input type="checkbox"/>

No

Does this rule repeat language found in statute?

Yes

No

If yes, please explain.

Various revised or new rules contain verbatim excerpts of new law for consistency.

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*The program has sent this proposed rule-making package to which stakeholders?*

HB 14-1317 Joint Implementation Task Force. All Colorado counties. Colorado Human Services Directors Association. Colorado Counties Incorporated. All licensed child care providers. Early Childhood Leadership Commission. Colorado Association for the Education of Young Children. Colorado Early Childhood Education Association. The Early Childhood Sub-PAC, the Finance Sub-PAC, the Economic Security Sub-PAC and the PAC. The Early Childhood Summit and the Early Childhood State Partners. Colorado Resource and Referral Agencies. Colorado Early Childhood Councils. Head Start. Parents and the General Public. Family Friend and Neighbor Care.

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Attachments:

Regulatory Analysis

Overview of Proposed Rule

Stakeholder Comment Summary

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## **REGULATORY ANALYSIS**

*(complete each question; answers may take more than the space provided)*

### **1. List of groups impacted by this rule:**

*Which groups of persons will benefit, bear the burdens or be adversely impacted by this rule?*

Child care providers offering higher quality rated child care will benefit from higher reimbursement for a child's regular daily rate, as well as child absence payment and normal holiday rate payments.

Families will benefit for many reasons, including:

- Greater emphasis on pre-eligibility determinations to get eligible families child care while their applications are reviewed.
- Reduced co-pay capped at one percent (1%) of income for families living at or below one hundred percent (100%) of the federal poverty guidelines.
- Decoupling of a parent's work schedule and the period of care for the child. For example, this enables a parent working in the evening to enroll his/her child in a high quality morning program.
- Greater transparency of county policies and procedures related to the CCCAP program.
- Reduced co-pay when a parent enrolls in higher quality rated facility starting in 2016.

Counties will benefit from the plethora of county specific data compelled of the Department each year beginning December 1, 2016. Counties will also benefit from the fiscal coverage that House Bill 14-1317 provides, for program modifications like:

- Raising the floor of eligibility statewide from 130% to 165% of the federal poverty guidelines.
- Raising paid absences to a minimum of six (6) per year, whether they are rolled into the rate or paid separately.
- For families deemed ineligible at redetermination due to an increase in income that exceeds the county's income ceiling, coverage is extended from fifteen (15) to ninety (90) days.
- Increasing from thirty (30) to ninety (90) days job-search as an eligible activity for CCCAP subsidies.

### **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?*

Qualitatively, families enrolled in CCCAP will benefit from H.B. 14-1317 in many ways, including reduced reporting requirements, more transparency of county policies and procedures, longer eligibility for job-search and education, greater extended coverage when eligibility is lost due to income based ineligibility, lower parent fees for higher quality facilities, the decoupling of work schedules and child care schedules, and a reduced parent fee for families at or below one hundred percent (100%) of the federal poverty guidelines.

Quantitatively, House Bill 14-1317 brings changes to the budget, programs, and potentially, outcomes for working parents and their children.



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### **REGULATORY ANALYSIS** (continued)

#### **3. Fiscal Impact:**

*For each of the categories listed below explain the distribution of dollars; please identify the costs, revenues, matches or any changes in the distribution of funds even if such change has a total zero effect for any entity that falls within the category. If this rule-making requires one of the categories listed below to devote resources without receiving additional funding, please explain why the rule-making is required and what consultation has occurred with those who will need to devote resources.*

State Fiscal Impact (Identify all state agencies with a fiscal impact, including any Colorado Benefits Management System (CBMS) change request costs required to implement this rule change)

None.

County Fiscal Impact

The fiscal impact to counties is limited to the allocation of House Bill 14-1317.

Federal Fiscal Impact

None

Other Fiscal Impact (such as providers, local governments, etc.)

Child care providers serving children in the CCCAP program may stand to benefit from higher daily reimbursement rates as a result of the provisions in the bill associated with tiered reimbursement, and payments for absences and holidays tied to higher quality ratings. With the decoupling of adult caretaker and teen parent work schedules and child attendance schedules, facilities may see the benefit of more regular attendance and outcomes for children who have been enrolled as a CCCAP participant.

#### **4. Data Description:**

*List and explain any data, such as studies, federal announcements, or questionnaires, which were relied upon when developing this rule?*

Substantial county-specific cost and program analysis for each provision of House Bill 14-1317 were generated and discussed at length by the House Bill 14-1317 Joint Implementation Task Force.

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**REGULATORY ANALYSIS** (continued)

**5. Alternatives to this Rule-making:**

*Describe any alternatives that were seriously considered. Are there any less costly or less intrusive ways to accomplish the purpose(s) of this rule? Explain why the program chose this rule-making rather than taking no action or using another alternative.*

None, House Bill 14-1317 has numerous provisions that have implementation being contingent on the rule-making of the State Board of Human Services.

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### **OVERVIEW OF PROPOSED RULE**

Compare and/or contrast the content of the current regulation and the proposed change.

<u>Section Numbers</u>	<u>Current Regulation</u>	<u>Proposed Change</u>	<u>Stakeholder Comment</u>			
3.902, B.	Program eligibility	Makes revision to decouple work schedule and child care schedule.	<u>  X  </u>	Yes	<u>  </u>	No
3.903	Program definitions	New and amended definitions for HB 14-1317 compliance	<u>  X  </u>	Yes	<u>  </u>	No
3.904.1, A.	Teen parent responsibilities	Makes revision to decouple work schedule and child care schedule.	<u>  X  </u>	Yes	<u>  </u>	No
3.905, C.	Authorization for payment	Aligns, when practicable, authorization and eligibility	<u>  X  </u>	Yes	<u>  </u>	No
3.908.1	Pre-eligibility determinations	Revises to includes new law and develops standards for pre-eligibility determinations	<u>  X  </u>	Yes	<u>  </u>	No
3.910	Absences and holidays and provider rates	Revises to balance payment for absences and holidays when a child has multiple providers, and tiered payments based on QRIS.	<u>  X  </u>	Yes	<u>  </u>	No
3.913	County Responsibilities	Amends "QQ" regarding authorization for care and adds new rules "AAA" on county-maintained wait lists, and "BBB" public posting of county policies and procedures.	<u>  X  </u>	Yes	<u>  </u>	No
3.915.2	Confidentiality	Amends rules by adding "C" to allow assistance when applying for CCCAP	<u>  X  </u>	Yes	<u>  </u>	No

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**OVERVIEW OF PROPOSED RULE** (continued)

3.915.3	Adverse action	Revises rule to increase to 90 days a family's eligibility at redetermination if no longer eligible based on family's income exceeding a limit.	<u>  X  </u>	Yes	<u>      </u>	No
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## **STAKEHOLDER COMMENT SUMMARY**

### **DEVELOPMENT**

The following individuals and/or entities were included in the development of these proposed rules (such as other Program Areas, Legislative Liaison, and Sub-PAC):

HB 14-1317 Joint Implementation Task Force. All Colorado counties. Colorado Human Services Directors Association. Colorado Counties Incorporated. All licensed child care providers. Early Childhood Leadership Commission. Colorado Association for the Education of Young Children. Colorado Early Childhood Education Association. The Early Childhood Sub PAC, the Finance Sub PAC, the Economic Security Sub-PAC, and the PAC. Colorado Resource and Referral Agencies. Colorado Early Childhood Councils. Head Start.

### **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:

HB 14-1317 Joint Implementation Task Force. All Colorado counties. Colorado Human Services Directors Association. Colorado Counties Incorporated. All licensed child care providers. Early Childhood Leadership Commission. Colorado Association for the Education of Young Children. Colorado Early Childhood Education Association. The Early Childhood Sub-PAC the Finance Sub-PAC, the Economic Security Sub-Pac and the PAC. The Early Childhood Summit and the Early Childhood State Partners. Colorado Resource and Referral Agencies. Colorado Early Childhood Councils. Head Start. Parents and the General Public. Family Friend and Neighbor Care.

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 ☒ No

Have these rules been reviewed by the appropriate Sub-PAC Committee?

☐ Yes ☒ No

Date presented \_\_\_\_\_. Were there any issues raised? \_\_\_\_ Yes \_\_\_\_ No

If not, why. The Sub-Pac and the PAC will review this matter at their September 4, 2014 meetings.

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**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 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.*

Stakeholders were the architects of the rule package. The HB 14-1317 Joint Implementation Task Force. was created, consisting of a task force of the Early Childhood Sub PAC and a committee of the Early Childhood Leadership Commission.

Counties, county representative groups, providers, Early Childhood Councils, Resource and Referral Agencies, state staff, and others.

Additionally, wide notice was given of the open nature of the series of meetings that occurred over the summer, and open comment for non-task force members we offered repeatedly at each meeting, and many non-task force members spoke up.

This package is currently posted on the Office of Early Childhood website at:  
[www.coloradoofficeofearlychildhood.com](http://www.coloradoofficeofearlychildhood.com) and open web based comments are being welcomed at:  
<https://www.surveymonkey.com/s/6PMMJBG>.

## (9 CCR 2503-9)

### **3.902 CHILD CARE PROGRAM ELIGIBILITY [Rev. eff. 7/1/11]**

Eligible Colorado Child Care Assistance Program populations must be an adult caretaker(s) or teen parent(s) of a child, meet program guidelines, and are one of the following:

- A. Participants in the Colorado Works Program who have a signed Individual Responsibility Contract that requires them to be in an eligible activity, as defined in Section 3.631.3, can receive Colorado Works child care for up to forty-five (45) calendar days while additional assessment is completed. Participants must be eligible for and receiving state diversion or basic cash assistance to continue receiving Colorado Works child care assistance past the forty-five (45) calendar days.
- B. Low income adult caretakers or teen parents who are in an eligible activity and need child care assistance ~~for that same period~~.
- C. Families eligible for Child Welfare Child Care through Child Welfare (refer to rule manual Volume 7, Section 7.302 (12 CCR 2509-4)).
- D. Food assistance recipients who are participating in the Employment First Program (refer to the Food Stamp staff manual, Section B-4215 (10 CCR 2506-1)).

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### **3.903 DEFINITIONS [Rev. eff. 9/1/11]**

"Additional care needs" means a child who has a physical and/or mental disability and needs a higher level of care on an individualized basis than that of his/her peers at the same age level.

"Adult caretaker" means a person in the home who is financially contributing to the welfare of the child and is the parent, adoptive parent, step-parent, legal guardian, or person who is acting in "loco parentis".

"Adult caretaker education" means information relayed to adult caretaker(s) about their child care options and other available services.

"Adverse action" means any action by the counties or their designee, which adversely affects the person's eligibility for or right to services provided or authorized under the Colorado Child Care Assistance Program.

"Affidavit" means a voluntary written declaration reflecting the personal knowledge of the declarant.

"Applicant" means the adult caretaker(s) or teen parent(s) who sign(s) the application form, re-determination form, and/or the client responsibilities agreement form.

"APPLICATION" MAY INCLUDE, BUT IS NOT LIMITED TO:

- A. AN ORIGINAL APPLICATION, WHICH IS THE FIRST APPLICATION FOR COLORADO CHILD CARE ASSISTANCE PROGRAM FILED BY PROSPECTIVE PROGRAM PARTICIPANT; OR,
- B. A REDETERMINATION APPLICATION FILED BY AN ENROLLED PROGRAM PARTICIPANT; OR,
- C. A REAPPLICATION, WHICH IS ANY SUBSEQUENT APPLICATION FILED AFTER AN ORIGINAL APPLICATION WHICH IS ALSO NOT FOR REDETERMINATION; OR,

- D. ANY APPLICATION FOR SOME ADDITIONAL PROGRAM BENEFIT BY AN ENROLLED PROGRAM PARTICIPANT.

"APPLICATION DATE" MEANS THE DATE THAT THE COUNTY RECEIVES THE SIGNED AND COMPLETED APPLICATION. REQUIRED SUPPORTING DOCUMENTS MAY BE SUBMITTED UP TO THIRTY (30) DAYS AFTER THE SIGNED COMPLETED APPLICATION.

"APPLICATION DATE FOR PRE-ELIGIBILITY DETERMINATIONS" MEANS THE DATE THAT THE APPLICATION IS RECEIVED FROM THE PROVIDER BY THE COUNTY. REQUIRED SUPPORTING DOCUMENTS MAY BE SUBMITTED UP TO THIRTY (30) DAYS AFTER THE SIGNED COMPLETED APPLICATION.

"Application process" means an application process which includes all of the following:

- A. The state approved, signed low-income child care application form completed by the applicant and any other adult caretaker(s) or his/her authorized representative, which includes appeal rights. Counties with Head Start programs may accept the Head Start application in lieu of the low-income child care application for those children enrolled in the Head Start program; and,
- B. The client responsibilities agreement form signed by the applicant and any other adult caretaker(s); and,
- C. The required verification supporting the information declared on the application form; and,
- D. As a county option, an orientation for new applicants may be required.

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"Eligibility activity", for the purpose of child care, means the activity that the teen parent(s) or adult caretaker(s) are involved in ~~for the time period that child care is needed~~. This may include job search; employment; and/or education/training, if the county supports education/training. For teen parents, education/training is an approved activity for all counties.

"Eligibility worker" means an employee of the counties or their designee, whose responsibility is to determine eligibility for the Colorado Child Care Assistance Program (CCCAP).

"Eligible child" means a child under the age of thirteen (13) years who needs child care services during a portion of the day, but less than twenty four (24) hours, and is physically residing with the eligible adult caretaker(s) ~~during the same period care is needed~~; or a child with additional care needs under the age of nineteen (19) who is physically or mentally incapable of caring for himself or herself or is under court supervision. Any child served through the Colorado Works Program or the Low-Income Child Care Program must be a citizen of the United States or a qualified alien as defined in Section 3.919, H, 1.

"ELIGIBILITY START DATE" MEANS THE DATE FROM WHICH PAYMENTS FOR CHILD CARE SERVICES WILL BE PAID BY THE COUNTY.

"Employment" means holding a part time or full time job for which wages, salary, in-kind income or commissions are received.

"Employment First" means a self sufficiency program funded by the Department of Agriculture for food benefit recipients not participating in Colorado Works.

"Employment verification" means the county form or a signed statement from the employer or employer's authorized designee stating employment begin date, hourly wage or gross salary amount, work schedule, payment frequency, date of first paycheck and verifiable employer contact information. ~~This is for initial employment verification or to verify ongoing work schedule, not to verify ongoing employment.~~



"Entered employment" means upon starting a new job the employment verification letter shall be used to anticipate income. ~~for the first three months. At the beginning of the third month of new employment, the county shall require pay stubs from the previous three months to determine an average of actual income for future months.~~

"ENTRY INCOME ELIGIBILITY LEVEL" MEANS THE LEVEL ABOVE WHICH AN ADULT CARETAKER IS NOT ELIGIBLE AT ORIGINAL APPLICATION. THE LEVEL IS SET BY EACH COUNTY BETWEEN THE BASE, WHICH IS AT OR ABOVE ONE-HUNDRED SIXTY-FIVE PERCENT (165%) OF THE FEDERAL POVERTY LEVEL, AND THE MAXIMUM CEILING, WHICH IS EIGHTY-FIVE PERCENT (85%) OF THE COLORADO STATE MEDIAN INCOME.

"Equivalent full-time units" mean all part-time units times a factor of .55 to be converted to full-time units. The full-time equivalent units added to the other full-time units must be less than thirteen (13) in order to be considered part-time for parental fees.

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"EXIT INCOME ELIGIBILITY LEVEL" MEANS THE INCOME, AT REDETERMINATION OF ELIGIBILITY, ABOVE WHICH THE COUNTY MAY DENY CONTINUING ELIGIBILITY, AND BASED ON THE FEDERAL POVERTY GUIDELINES. EACH COUNTY SETS THEIR EXIT ELIGIBILITY LEVEL, THOUGH IT MUST BE HIGHER THAN THE ENTRY INCOME ELIGIBILITY LEVEL AND CANNOT EXCEED EIGHTY-FIVE PERCENT (85%) OF THE COLORADO STATE MEDIAN INCOME.

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"HEAD START" IS A FEDERALLY FUNDED EARLY LEARNING PROGRAM THAT PROVIDES COMPREHENSIVE SERVICES TO LOW-INCOME PREGNANT WOMEN AND FAMILIES WITH CHILDREN AGES BIRTH TO FIVE YEARS OF AGE THROUGH PROVISION OF EDUCATION, HEALTH, NUTRITION, SOCIAL AND OTHER SERVICES.

"HIGH-QUALITY EARLY CHILDHOOD PROGRAM" MEANS A PROGRAM OPERATED BY A PROVIDER WITH A FISCAL AGREEMENT THROUGH CCCAP AND THAT IS IN THE TOP THREE LEVELS OF THE STATE DEPARTMENT'S QUALITY RATING AND IMPROVEMENT SYSTEM, IS ACCREDITED BY A STATE DEPARTMENT-APPROVED ACCREDITING BODY, OR IS AN EARLY HEAD START OR HEAD START PROGRAM THAT MEETS FEDERAL STANDARDS.

"Income eligibility" means that eligibility for child care subsidies is based on income, as listed in Section 3.920, and determined by measuring the countable adult caretaker income and size against eligibility guidelines. Income eligibility ~~MUST~~ ~~can be based on the PRIOR THIRTY (30) CALENDAR DAY PERIOD~~ ~~three most recent prior consecutive month's income~~ for initial application, a best estimate of anticipated income from the employment verification letter for new employment, OR ON THE PRIOR THIRTY (30) DAY PERIOD ~~an average of the previous three (3) through twelve (12) month period~~ for ongoing eligibility, UNLESS, ON A CASE-BY-CASE BASIS, THE PRIOR THIRTY (30) DAY PERIOD DOES NOT PROVIDE AN ACCURATE INDICATION OF ANTICIPATED INCOME, IN WHICH CASE A COUNTY CAN REQUIRE EVIDENCE OF UP TO TWELVE (12) OF THE MOST RECENT MONTHS OF INCOME. AN ADULT CARETAKER MAY ALSO PROVIDE EVIDENCE OF UP TO TWELVE (12) OF THE MOST RECENT MONTHS OF INCOME IF THEY CHOOSE TO DO SO IF SUCH EVIDENCE MORE ACCURATELY REFLECTS THE ADULT CARETAKER'S CURRENT INCOME LEVEL. ~~Families shall not be required to provide income verification on a monthly basis.~~

"Job search" means the low-income childcare eligibility activity for adult caretaker(s) or teen parent(s) are participating in making them eligible for no fewer than SIXTY **(60)** ~~thirty (30)~~ actual days of child care in a twelve (12) month period. The twelve (12) month period begins on the first actual day of job search. Job Search enrollees are approved and monitored to ensure that activities comply with county standards.

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"One adult caretaker or teen parent eligible household composition" means:

- A. The adult caretaker or teen parent is engaged in an eligible activity and needs child care ~~for that same period~~; or,
- B. A two-adult caretaker or teen parent household is considered a one-adult caretaker household when one adult or teen parent caretaker is involuntarily out of the home.

"POST ELIGIBILITY PERIOD" MEANS NINETY (90) DAYS FROM THE DATE THE OF REDETERMINATION AT WHICH TIME THE HOUSEHOLD INCOME EXCEEDS THE EXIT INCOME ELIGIBILITY LEVEL SET BY THE COUNTY.

"REDETERMINATION OF INCOME ELIGIBILITY" MEANS THE CRITERIA USED BY A COUNTY TO DETERMINE ELIGIBILITY OF AN ADULT CARETAKER ALREADY ENROLLED IN CCCAP FOR WHOM THESE RULES REQUIRE A REDETERMINATION OF ELIGIBILITY. THE COUNTY SET REDETERMINATION ELIGIBILITY RATE LEVEL MUST EXCEED THAT COUNTY'S BASE RATE FOR ELIGIBILITY.

"REGIONALLY ACCREDITED INSTITUTION OF HIGHER EDUCATION" MEANS A COMMUNITY COLLEGE, COLLEGE, OR UNIVERSITY WHICH IS A CANDIDATE FOR ACCREDITATION OR IS ACCREDITED BY ONE OF THE FOLLOWING REGIONAL ACCREDITING BODIES: [MIDDLE STATES ASSOCIATION OF COLLEGES AND SCHOOLS](#), [NEW ENGLAND ASSOCIATION OF SCHOOLS AND COLLEGES](#), [NORTH CENTRAL ASSOCIATION OF COLLEGES AND SCHOOLS](#), [NORTHWEST COMMISSION ON COLLEGES AND UNIVERSITIES](#), [SOUTHERN ASSOCIATION OF COLLEGES AND SCHOOLS](#), [WESTERN ASSOCIATION OF SCHOOLS AND COLLEGES](#), [ACCREDITING COMMISSION FOR COMMUNITY AND JUNIOR COLLEGES](#).

"TIERED REIMBURSEMENT" MEANS A PAY STRUCTURE THAT REFLECTS INCREASING RATES OF REIMBURSEMENT FOR HIGH-QUALITY EARLY CHILDHOOD PROGRAMS THAT RECEIVE CCCAP MONEYS.

"Training" (county option) means educational programs including post-secondary training for a Bachelor's degree or less, or A WORKFORCE TRAINING PROGRAM SUCH AS vocational or technical job skills training, for AT LEAST ANY TWO YEARS when offered as secondary education for a period of up to forty-eight (48) months per eligible adult caretaker(s). WORKFORCE TRAINING PROGRAMS INCLUDE educational activities such as GED, high school diploma, English as a Second Language, or adult basic education are considered training for a period of up to twelve (12) months per eligible adult caretaker(s).

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"WAIT LIST" MEANS A LIST MAINTAINED BY A COUNTY REFLECTING, IN ORDER OF RECEIPT, INDIVIDUALS WHO HAVE SUBMITTED AN APPLICATION FOR THE CCCAP PROGRAM FOR WHOM THE COUNTY DOES NOT HAVE SUFFICIENT FUNDING TO ENROLL INTO THE PROGRAM.

"Willful misrepresentation/withholding of information" means an understatement, overstatement, or omission, whether oral or written, made by a household voluntarily or in response to oral or written questions from the department, and/or a willful failure by a household to report changes in income, if the family's income exceeds eighty-five percent (85%) of the State median income within ten (10) days, or changes to the qualifying eligible activity within four weeks of the change.

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### **3.904.1 TEEN PARENT RESPONSIBILITIES [Ref. eff. 7/1/12]**

- A. The teen parent must be in a verified eligible activity and need child care assistance ~~for that same period~~.
- B. The teen parent must meet the eligibility guidelines set by the state and the county of residence.

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### **3.905 ARRANGEMENT FOR CHILD CARE SERVICES [Rev. eff. 11/1/13]**

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#### **C. Authorization for Payment**

Counties shall use the State prescribed child care authorization notice form to purchase care on a child-by-child basis and identify the amount of care and length of authorized care. Payment for care will be authorized for providers who have a license or who are qualified providers and have a current, signed fiscal agreement with the county (see 3.908 Eligible Facilities).

EXCEPT UNDER LIMITED CIRCUMSTANCES, THE DURATION OF THE CHILD CARE AUTHORIZATION NOTICE MUST BE THE SAME AS THE CHILD CARE ELIGIBILITY PERIOD FOR THE CHILD'S ADULT CARE TAKER(S) OR TEEN PARENT(S). CIRCUMSTANCES WHERE THE AUTHORIZATION AND ELIGIBILITY MAY NOT ALIGN INCLUDES, BUT ARE NOT LIMITED TO:

1. WHEN AN ELIGIBLE CHILD IS OR WILL BE ENROLLED IN A PROGRAM THAT DOES NOT INTEND TO OPERATE FOR THE ELIGIBILITY PERIOD.
2. WHEN CHILD'S FAMILY DOES NOT INTEND TO KEEP THE CHILD ENROLLED WITH A SINGULAR PROVIDER DURING THE ELIGIBILITY PERIOD.
3. WHEN THE ADULT CARETAKER(S) OR TEEN PARENT(S) ARE PARTICIPATING IN TIME LIMITED ACTIVITIES SUCH AS JOB SEARCH OR EDUCATION.

1. When payment will be made to the provider(s), the county must forward the child care authorization notice form to the provider(s) within seven (7) working days of determined eligibility. This time limit applies to original, changed and terminated actions. The state may not reimburse counties if the seven working day requirement is not met.
2. Child care will be paid for children under the age of thirteen (13) for a portion of a day, but less than twenty-four (24) hours. Child care for eligible activities will include reasonable transportation time from the child care location to eligible activity and from eligible activity to child care location.
3. Children over the age of thirteen (13) but up to age nineteen (19), who are physically or mentally incapable of caring for himself or herself or under court supervision, may be eligible for child care due to having additional care needs for a portion of a day but less than twenty-four (24) hours. Counties may pay more for children who have additional care needs based upon verified individual needs and documented in county policy, but rates cannot exceed the provider's published private pay rates.
4. Counties may pay for activity fees if the provider charges such fees, and if the Child Care Fiscal Agreement contains the provider's policy on activity fee costs. Counties shall set their own limit on activity fees with prior notice to the State Department.
5. Counties may pay for transportation costs if the provider charges such costs, and if the Child Care Fiscal Agreement contains the provider's policy on transportation costs. Allowable costs include the provider's charges for transportation from the provider's facility to another child care or school facility. Transportation costs do not include travel between an adult caretaker's or teen parent's home and the provider's facility. Counties shall set their own limit on transportation fees with prior notice to the State Department.
6. Counties may pay for registration fees if the provider is licensed, and if the Child Care Fiscal Agreement contains the provider's policy on registration costs. Counties shall set their own limit on registration fees with prior notice to the State Department.
7. Any money paid or payable to providers shall be subject to execution, levy, attachment, garnishment or other legal process.

## 8. Expenditures Shall be Necessary and Reasonable

Expenditures shall be necessary and reasonable for proper and efficient performance and administration. A cost is reasonable if, in its nature and amount, it meets all the following criteria:

### a. Expenditures Shall be Compared to Market Prices for Reasonableness

Expenditures shall be compared to the market prices for comparable goods or services as a test for reasonableness.

### b. Expenditures Shall be Ordinary and Necessary

Expenditures shall be of a type generally recognized as ordinary and necessary for the operation of the governmental unit or the performance of the federal award.

### c. Expenditures Shall Meet Standards Such as Sound Business Practices and Arms-Length Bargaining

Expenditures shall have restraints or requirements imposed by such factors as: sound business practices; arms-length bargaining; Federal, State and other laws and regulations; and, terms and conditions of the State and/or Federal award. "Arms-length bargaining" means both parties to a contract have relatively equal powers of negotiation upon entering the contract. Neither party has a disproportionate amount of power to strong-arm the other party. Less-than-arms-length transactions are prohibited and these include, but are not limited to, those where; one party is able to control or substantially influence the actions of the other.

### d. Expenditures Shall Be the Same as Would Be Incurred by a Prudent Person

Expenditures shall not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. A prudent person is one who considers their responsibilities to the governmental unit, its employees, the public at large, and the federal government.

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## **3.908.1 PRE-ELIGIBILITY DETERMINATIONS [Rev. eff. 9/1/11]**

The Early Care and Education provider may provide services to the family prior to the final determination of eligibility and shall be reimbursed for such services only if the county determines the family is eligible for services and there is no need to place the family on the waiting list. The start date of eligibility is defined in Section 3.913, FF. If the family is found ineligible for services, the Early Care and Education provider shall not be reimbursed for any services provided during the period between his/her pre-eligibility determination and the county's final determination of eligibility.

THE EARLY CARE AND EDUCATION PROVIDER OR COUNTY MAY CONDUCT A PRE-ELIGIBILITY DETERMINATION FOR CHILD CARE ASSISTANCE FOR A POTENTIAL PROGRAM PARTICIPANT TO FACILITATE THE DETERMINATION PROCESS.

- A. THE EARLY CARE AND EDUCATION PROVIDER MAY SUBMIT THE PROSPECTIVE PROGRAM PARTICIPANT'S STATE APPROVED APPLICATION, RELEASE OF INFORMATION, AND DOCUMENTATION TO THE COUNTY FOR FINAL DETERMINATION OF ELIGIBILITY FOR CHILD CARE ASSISTANCE. THE PROVIDER MUST SIGNIFY ON THE FIRST PAGE OF THE APPLICATION IN THE SPACE PROVIDED THAT A PRE-ELIGIBILITY DETERMINATION HAS BEEN MADE BY THE PROVIDER.

- B. THE EARLY CARE AND EDUCATION PROVIDER OR COUNTY MAY PROVIDE SERVICES TO THE FAMILY PRIOR TO FINAL DETERMINATION OF ELIGIBILITY, AND THE COUNTY SHALL REIMBURSE A PROVIDER:
  - 1. AS OF THE DATE THE COUNTY RECEIVES THE APPLICATION FROM THE PROVIDER FOR SUCH SERVICES ONLY IF THE COUNTY DETERMINES THE PROSPECTIVE PROGRAM PARTICIPANT IS ELIGIBLE FOR SERVICES; AND,
  - 2. THERE IS NO NEED TO PLACE THE PROSPECTIVE PROGRAM PARTICIPANT ON A WAITING LIST.
- C. ALL SUPPORTING DOCUMENTATION FOR AN APPLICATION SUBMITTED BY A PROVIDER MUST BE RECEIVED IN THIRTY (30) CALENDAR DAYS OR THE APPLICATION MAY BE CONSIDERED ABANDONED BY THE COUNTY.
- D. IF THE PROSPECTIVE PROGRAM PARTICIPANT IS FOUND INELIGIBLE FOR SERVICES, THE COUNTY SHALL NOT REIMBURSE THE EARLY CARE AND EDUCATION PROVIDER FOR ANY SERVICES PROVIDED DURING THE PERIOD BETWEEN ITS PRE-ELIGIBILITY DETERMINATION AND THE COUNTY'S FINAL DETERMINATION OF ELIGIBILITY.
- E. IF AN EARLY CARE AND EDUCATION PROVIDER OR COUNTY HAS CONDUCTED A PRE-ELIGIBILITY DETERMINATION, THEY MUST INCLUDE DOCUMENTATION OF THE INFORMATION ON WHICH THE PRE-ELIGIBILITY DETERMINATION HAS BEEN MADE IN OR WITH THE APPLICATION. THE DOCUMENTATION MUST INCLUDE HOUSEHOLD INCOME, HOUSEHOLD COMPOSITION, AND ELIGIBLE ACTIVITY.
- F. AFTER THE SUBMISSION OF A PRE-ELIGIBILITY DETERMINATION BY A CHILD CARE PROVIDER OR A COUNTY, ALL SUPPORTING DOCUMENTATION MUST BE RECEIVED WITHIN THIRTY (30) CALENDAR DAYS.

### **3.909 REGISTRATION OF QUALIFIED PROVIDERS [Rev. eff. 7/1/11]**

The counties or their designee shall register qualified providers and include the following provider information: name, address (not a P.O. Box #), phone number and social security number. Pursuant to Section 24-76.5-103, C.R.S., counties or their designee must verify the lawful presence in the United States of all applicants for state or local public benefits, or federal benefits provided by the Colorado Department of Human Services, or by the county departments of human/social services or their designee under the supervision of the State Department pursuant to Section 3.140.12, except as otherwise provided in subsection (3) of 24-76.5-103, C.R.S. Any contract provided by an agency of a state or local government is considered a public benefit.

### **3.910 PROVIDER RATES [Rev. eff. 11/1/13]**

Counties may opt to adopt the state recommended provider(s) rates or may elect to set their own rate limits. If counties elect to set their own rates, they must notify the state on the State-prescribed form prior to implementation of those rates. A COUNTY THAT CHOOSES TO OPT OUT OF ADHERING TO THE STATE-ESTABLISHED PROVIDER RATES MUST CONSULT WITH ITS LOCAL EARLY CHILDHOOD COUNCIL, ANY RELEVANT LOCAL RESOURCE AND REFERRAL AGENCY, AND CHILD CARE PROVIDERS IN THE COUNTY WHO SERVE OR WANT TO SERVE CHILDREN IN THE CCCAP PROGRAM, AND MUST PROVIDE OPPORTUNITIES FOR THESE ENTITIES TO INFORM AND PROVIDE COMMENT ON COUNTY-ESTABLISHED RATES. State and county set rates must be paid in accordance with payment policies set forth below.

- A. Payments shall be made in part time/full time daily rates.
  - 1. Part-time is defined as zero (0) hours, zero (0) minutes, and one (1) second through five (5) hours, zero (0) minutes, and zero (0) seconds per day. Part time is paid at fifty-five percent (55%) of the full time rate, unless the county designates otherwise.

2. Full time is defined as five (5) hours, zero (0) minutes, and one (1) second through twelve (12) hours, zero (0) minutes, and zero (0) seconds.
3. Full-time/part time is defined as twelve (12) hours, zero (0) minutes, one (1) second through seventeen (17) hours, zero (0) minutes, zero (0) seconds of care.
4. Full time/full time is defined as seventeen (17) hours, zero (0) minutes, one (1) second through twenty-four (24) hours, zero (0) minutes, zero (0) seconds of care.
5. Counties may set rates for basic and alternative care as defined by the county and reported in the county plan.

**B. ABSENCES AND HOLIDAYS**

1. COUNTIES MAY PAY FOR THE COST OF ABSENCES AND HOLIDAYS WITH METHODS INCLUDING BUT NOT LIMITED TO ROLLING THE RATE INTO AN OVERALL DAILY RATE, OR PAYING A DAILY RATE ON THE DATE OF ABSENCE OR HOLIDAY.
- B. 2. Counties shall pay for absences in accordance with the policy set by the county. Any absence policy set by the county shall address payments to hold a child's slot with a provider when the child is not in care to include, but not limited to, payments for scheduled school breaks, absences, and holidays.
3. COUNTIES HAVE THE DISCRETION TO ROLL PAYMENTS FOR ABSENCES AND HOLIDAYS INTO THEIR DAILY REIMBURSEMENT RATES, OR MAY PAY FOR ABSENCES AND HOLIDAYS WITH A DAILY RATE AS THEY OCCUR AND PURSUANT TO THE COUNTIES POLICIES.
4. IF A CHILD UTILIZES CARE AT MULTIPLE PROVIDERS, COUNTIES SHALL REIMBURSE PROVIDERS PROPORTIONATE TO THE QUANTITY OF CARE PROVIDED OVERALL OR IN ACCORDANCE WITH THE CHILD'S ACTUAL USE OF CARE AND IF THE COUNTY REIMBURSES SEPARATE TO THE BASE RATE.
5. COUNTIES MUST REIMBURSE PROVIDERS FOR ABSENCES AND HOLIDAYS BASED ON THE FOLLOWING SCHEDULE:
  - a. FOR PROVIDERS IN THE FIRST LEVEL OF THE DEPARTMENT'S QUALITY RATING AND IMPROVEMENT SYSTEM, NO FEWER THAN SIX (6) ABSENCES OR HOLIDAYS;
  - b. FOR PROVIDERS IN THE SECOND LEVEL OF THE DEPARTMENT'S QUALITY RATING AND IMPROVEMENT SYSTEM, NO FEWER THAN TEN (10) ABSENCES OR HOLIDAYS;
  - c. FOR PROVIDERS IN THE TOP THREE LEVELS OF THE DEPARTMENT'S QUALITY RATING AND IMPROVEMENT SYSTEM, NO FEWER THAN FIFTEEN (15) ABSENCES OR HOLIDAYS.

C. Upon notice to the state, counties may negotiate fiscal agreements that are modified to include rates and fees in a single rate of payment in a slot contract.

D. Providers who contend that the county has not made payment for care provided under the Colorado Child Care Assistance Program in compliance with these rules may request an informal conference with staff, the appropriate supervisor, the county director or the director's designee, and, if requested by the provider(s), state program staff. Any request for a conference shall be submitted in writing within fifteen (15) calendar days of the date of the action. The county shall hold that conference within two (2) weeks of the date of the request. The county shall provide written notice of its final decision within fifteen (15) business days of the conference. The purpose

of the conference shall be limited to discussion of the payments in dispute and the relevant rules regarding payment.

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### 3.913 COUNTY RESPONSIBILITIES [Rev. eff. 7/1/12]

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#### QQ. AUTHORIZATION FOR CARE

1. Counties shall authorize care based on verified need, by establishing an authorization to cover the maximum amount of units needed to ensure care is available based on the client's ~~activity schedule~~ PARTICIPATION IN AN ELIGIBLE ACTIVITY, NOT NECESSARILY TIED TO THE CLIENT'S ACTIVITY SCHEDULE, AND BASED ON THE CHILD'S NEED FOR CARE.
2. THE CHILD'S SCHEDULE SHOULD NOT BE BASED ON THE ADULT CARETAKER OR TEEN PARENT'S SCHEDULE.
3. AUTHORIZED DAYS MAY BE UTILIZED BY THE ADULT CARETAKER OR TEEN PARENT ON ANY DAY OF THE WEEK RATHER THAN SPECIFIC DAYS.
4. FOR PRE-ELIGIBILITY CARE REIMBURSABLE AFTER ELIGIBILITY HAS BEEN DETERMINED AND THE COUNTY CAN PROVIDE SUBSIDY FOR THE POTENTIAL PROGRAM PARTICIPANT, AUTHORIZATION SHALL BE DATED TO THE DATE THE APPLICATION DESIGNATED A PRE-ELIGIBILITY MATTER WAS RECEIVED BY THE COUNTY FROM THE PROVIDER.

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- AAA. COUNTIES MUST MAINTAIN A CURRENT AND ACCURATE WAITING LIST OF ADULT CARETAKERS AND TEEN PARENTS WHO HAVE APPLIED FOR THE CCCAP PROGRAM AND ARE LIKELY TO BE FOUND ELIGIBLE BASED ON SELF-REPORTED INCOME AND JOB, EDUCATION, OR WORKFORCE TRAINING ACTIVITY IF POTENTIAL PROGRAM PARTICIPANTS ARE NOT ABLE TO BE SERVED AT THE TIME OF APPLICATION DUE TO COUNTY FUNDING CONCERNS. COUNTIES MAY ENROLL ADULT CARETAKERS AND TEEN PARENTS FROM WAITING LISTS ACCORDING TO LOCAL PRIORITIES AND MAY REQUIRE AN APPLICANT TO RESTATE HIS OR HER INTENTION TO BE KEPT ON THE WAITING LIST EVERY SIX MONTHS IN ORDER TO MAINTAIN HIS OR HER PLACE ON THE WAITING LIST.
- BBB. COUNTIES SHALL POST ELIGIBILITY, AUTHORIZATION, AND ADMINISTRATION POLICIES AND PROCEDURES SO THEY ARE EASILY ACCESSIBLE AND READABLE TO THE LAYPERSON. THE POLICIES MUST BE SENT TO THE DEPARTMENT FOR COMPILATION.

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### **3.915.2 CONFIDENTIALITY [Rev. eff. 4/1/09]**

The use or disclosure of information by the counties or their designee(s) concerning current or prior applicants and recipients shall be prohibited except for purposes directly connected with the administration of public assistance and welfare and related State Department activities which include:

- A. Administration of county child care programs:
  - 1. Establishing of eligibility.
  - 2. Determining amount and type of child care assistance to be provided.
  - 3. Providing child care assistance.
- B. Any investigation, recovery, prosecution, or criminal or civil proceeding in connection with the administration of the program.
- C. AN ADULT CARETAKER OR TEEN PARENT APPLYING FOR CCCAP MAY AUTHORIZE A LICENSED CHILD CARE PROVIDER OR HEAD START PROVIDER TO ASSIST THEM WITH THE COMPLETION OF A CCCAP APPLICATION, INCLUDING COLLECTION AND ORGANIZATION OF SUPPORTING DOCUMENTATION TO SUBMIT THE APPLICATION AND SUPPORTING DOCUMENTS TO A COUNTY DEPARTMENT OF HUMAN OR SOCIAL SERVICES. AUTHORIZATION FOR APPLICATION ASSISTANCE AND RELEASE OF INFORMATION MUST BE OBTAINED ON A DEPARTMENT-APPROVED FORM AND INCLUDED WITH THE CCCAP APPLICATION.

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### **3.915.3 TIMELY WRITTEN NOTICE OF ADVERSE ACTION [Rev. eff. 7/1/11]**

A decision to take adverse action concerning an applicant or a provider for assistance payments will result in a written notice mailed to the applicant or provider within one (1) business day of the decision. The written notice is considered mailed when it is faxed, emailed, hand-delivered, or deposited with the postal service. Eleven (11) calendar days will follow the date of mailing the notice before adverse action is actually taken with the following exceptions, which require no prior notice:

AT THE TIME OF ANNUAL REDETERMINATION, AN ADULT CARETAKER(S) OR TEEN PARENT(S) ENROLLED IN CCCAP, WHOSE HOUSEHOLD INCOME EXCEEDS THE EXIT INCOME ELIGIBILITY LEVELS SET BY THE COUNTY, SHALL CONTINUE TO RECEIVE THE CCCAP SUBSIDY FOR NO LESS THAN NINETY (90) CALENDAR DAYS; EXCEPT THAT IN NO EVENT SHALL CHILD CARE ASSISTANCE BE PROVIDED IF THE HOUSEHOLD INCOME EXCEEDS EIGHTY-FIVE PERCENT (85%) OF THE COLORADO STATE MEDIAN INCOME.

- A. When facts indicate an overpayment because of probable fraud or an intentional program violation and such facts have been verified to the extent possible.
- B. When the proposed adverse action is based on a clear, written statement signed by the individual which states that s/he no longer wishes to receive assistance or services.
- C. When the counties or their designee(s) have confirmed the death of a recipient or of the applicant when there is no other eligible applicant(s) available or willing to act as the new payee.
- D. The counties have the authority to terminate a fiscal agreement with any provider without advance notice if a child's health or safety is endangered or if the provider is under a negative licensing action.

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### 3.919 ELIGIBILITY FOR LOW-INCOME PROGRAM FAMILIES [Rev. eff. 11/1/13]

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- B. The applicant(s) must be an adult caretaker or teen parent who meet(s) the following criteria  
APPLICANTS MUST MEET THE CRITERIA OF ONE OR MORE OF THE FOLLOWING  
ACTIVITIES:
1. Is actively participating in an eligible activity ~~and needs child care assistance for that same period.~~
  2. Meets the low-income eligibility guidelines set by the county and state.
  3. Must have physical custody of the child for the period they are requesting care.
- C. The application process must be completed and adult caretaker(s) or teen parents must sign the required application forms. This includes:
1. The State approved, signed form completed by the applicant or their authorized representative, which includes appeal rights. Counties with Head Start programs may accept the Head Start application in lieu of the Low-Income Child Care application for those children enrolled in the head start program; and,
  2. The client responsibilities agreement form; and,
  3. The required verification supporting the information declared on the application form; and,
  4. An orientation for new applicants as a county option.
- D. For families ending their participation in the Colorado Works Program due to employment or training, a Low-Income Child Care application shall not be required for transition families, except as outlined in items below. Adult caretakers or teen parents shall be required to complete and sign a client responsibilities agreement form and provide verification of income and eligible activity as set forth in Section 3.919, E and I. Counties shall obtain needed verification, if available, through other public assistance programs. Counties shall re-determine the transition family's circumstances as defined in Section 3.921.

Counties shall not be required to transition families if any of the following apply:

1. The family leaves the Colorado Works Program due to an Intentional Program Violation (IPV) as determined in Section 3.500 or as outlined in county policy; or,
  2. The family needs child care for training and the residing county does not include training as an eligible activity or the applicant has exceeded the maximum allowable training period for that county; or,
  3. The residing county's maximum income level is below that of the transitioning family; or,
  4. The residing county has a waiting list and the county waiting list policy does not exempt transition families; or,
  5. If a family is not transitioned for the reasons outlined above, the county shall provide notice as set forth in Sections 3.915.3 and 3.915.4.
- E. Low-Income Eligibility Guidelines
1. Adult caretaker gross income may not exceed the maximum defined by the county of residence of the applicant. Each county shall determine its maximum gross monthly

income guidelines not to exceed eighty-five percent (85%) of the state median income. ENTRY income eligibility cannot be set below ONE-HUNDRED AND SIXTY-FIVE PERCENT (165%) ~~130%~~ of federal poverty guidelines.

2. Generally, the expected monthly income amount is based on the income received in the PRIOR THIRTY (30) DAY PERIOD ~~previous three months~~; except that, when the PRIOR THIRTY (30) DAY PERIOD ~~three previous months~~ ~~do~~ DOES not provide an accurate indication of anticipated income AS REFERENCED IN THE DEFINITION OF "INCOME ELIGIBILITY" IN SECTION 3.903 or under circumstances as specified below, a different period of time may be applicable:
  - a. For new or changed income, a period shorter than a month may be used to arrive at a projected monthly amount;
  - b. For contract employment in cases, such as in some school systems, where the employees derive their annual income in a period shorter than a year, the income shall be prorated over the term of the contract, provided that the income from the contract is not earned on an hourly or piecework basis;
  - c. For regularly received self-employment income, net earnings will usually be prorated and counted as received in a PRIOR THIRTY (30) DAY PERIOD ~~three~~ ~~(3) month period~~, except for farm income. For further information, see Section 3.920, A, 1-2, on self-employment under countable earned income.
  - d. For all other cases where receipt of income is reasonably certain but the monthly amount is expected to fluctuate, a period of up to twelve (12) months ~~shall~~ MAY be used to arrive at an average monthly amount;
  - e. For income from rental property to be considered as self-employment income, the adult caretaker(s) or teen parent(s) must actively manage the property at least an average of twenty (20) hours per week. Income from rental property will be considered as unearned income if the adult caretaker(s) or teen parent(s) are not actively managing the property an average of at least TWENTY (20) hours per week. Rental income, as self-employment or as unearned income, shall be averaged over a twelve (12) month period to determine monthly income. Income from jointly owned property must be considered as a percentage at least equal to the percentage of ownership or, if receiving more than percentage of ownership, the actual amount received.
  - f. For cases where a change in the monthly income amount can be anticipated with reasonable certainty, such as with Social Security cost-of-living increases, or other similar benefit increases, the expected amount shall be considered in arriving at countable monthly income for the month received.
  - g. Income inclusions and exclusions (Section 3.920) shall be used in income calculations.
  - h. Irregular child support income shall be averaged over a period of time up to twelve (12) months in order to calculate household income.
3. Income Verification at Application
  - a. WRITTEN DOCUMENTATION OF EARNED AND UNEARNED INCOME NEEDED FOR ONGOING EMPLOYMENT OR AN EMPLOYMENT VERIFICATION LETTER FOR ENTERED EMPLOYMENT IS REQUIRED WITHIN THIRTY (30) CALENDAR DAYS OF THE DATE OF APPLICATION.
  - b. If written documentation is not available at time of eligibility determination, verbal verification from the employer or other person issuing the payment may be obtained. ~~Written documentation supporting the verbal verification must still be~~

~~provided within fifteen (15) calendar days.~~ Counties shall document the verbal verification in the case file to include the date that the information was received, who provided the information, and a contact phone number.

- c. If income is not verified ~~in writing~~ within THIRTY (30) calendar days, the applicant's case will be closed and they will need to reapply for child care subsidies.

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## I. Eligible Activities

Applicants must meet the criteria of ~~at least one~~ or more of the following activities:

### 1. Employment Criteria

Applicants may be employed full or part time. Applicants must submit written verification of employment and wages within fifteen (15) calendar days of the date the application is received by the county or designated agency. Owners of LLC's and S-Corporations, because they have limited personal liability for the debts and actions of the business, are considered employees of the corporation. This verification must be three months of pay stubs if ongoing employment or an employment verification letter if it is new employment. The employed person must show that his/her taxable gross income divided by the number of hours of care used for the employment activity equals at least the current federal minimum wage.

### 2. Self-Employed Criteria

- a. At time of application, self-employed applicants must submit written verification of self-employment status within fifteen (15) calendar days of application. This verification would be a self-employment form from the Internal Revenue Service (IRS) or other government agency with the authority to validate self-employment status.
- b. The person must submit a ledger listing his/her income and work-related expenses. All expenses must be verified or they will not be allowed.
- c. The person must submit an expected weekly employment schedule that includes approximate employment hours. This is required upon beginning self-employment, at application, and at re-determination.
- d. The person must show that he/she has maintained an average income that exceeds their business expenses from self-employment.
- e. The person must show that his/her taxable gross income divided by the number of hours of care used for the employment activity equals at least the current federal minimum wage.

### 3. Job Search Criteria

Job search child care is ~~limited to~~ AVAILABLE TO ELIGIBLE PARTICIPANTS FOR NO FEWER THAN SIXTY **(60)** ~~thirty (30)~~ actual days of child care in a twelve (12) month period beginning with the first actual day of job search activity.

The amount of care authorized each day shall be commensurate with the amount needed to complete the job search tasks AT A MINIMUM. Job search child care shall be approved in the following situations:

- a. When individuals lose their jobs while enrolled in the Low-Income program and job search child care is approved by the county or designee and monitored to ensure that job search activities comply with county or state standards.
  - b. For new applicants, when approved by the county or designee and monitored to ensure that job search activities comply with county or state standards.
4. Training Criteria AND EDUCATION (~~County Option~~)

AN ADULT CARETAKER OR TEEN PARENT WHO IS ENROLLED IN A REGIONALLY ACCREDITED POST-SECONDARY EDUCATION PROGRAM OR A WORKFORCE TRAINING PROGRAM IS ELIGIBLE FOR CCCAP FOR AT LEAST TWO YEARS OF THE POST-SECONDARY EDUCATION OR WORKFORCE TRAINING PROGRAM, PROVIDED ALL OTHER ELIGIBILITY REQUIREMENTS ARE MET DURING THOSE TWO YEARS. A COUNTY MAY GIVE PRIORITY FOR SERVICES TO A WORKING ADULT CARETAKER OR TEEN PARENT OVER AN ADULT CARETAKER OR TEEN PARENT ENROLLED IN POSTSECONDARY EDUCATION OR WORKFORCE TRAINING.

~~For adult caretaker(s), counties may opt to offer training as an eligible activity within the regulatory confines set forth herein. If a county intends to include training for adult caretakers as an eligible activity, the county must notify the Colorado Department of Human Services in writing of its intention and the effective date of implementation. COUNTIES~~ Child care staff may refer adult caretakers AND TEEN PARENTS to community employment and training resources for assistance in making a training AND POSTSECONDARY EDUCATION decision.

- a. ~~At the option of the county,~~ adult caretaker educational programs include postsecondary education for a first bachelor's degree or less, or vocational/technical job skills training when offered as secondary education which result in a diploma or certificate, for a maximum of TWO YEARS ~~forty-eight (48) months~~. This is limited to coursework for the degree or certificate.
- b. In addition to the months of assistance available for post-secondary and vocational or technical training, up to twelve (12) months of assistance is allowable for GED, high school diploma, English as a Second Language or adult basic education.
- c. ~~A maximum number of months allowed by the county for post-secondary, vocational and technical education, plus the allowable months for GED, high school diploma, English as a Second Language, or adult basic education is available for each adult caretaker.~~
- c. ADULT CARETAKERS AND TEEN PARENTS MAY BE ENROLLED FULL OR PART TIME:
  - 1) 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.
  - 2) PART-TIME ATTENDANCE MEANS A MINIMUM OF TWELVE (12) HOURS OF SCHOOL ATTENDANCE PER WEEK, OR AS DEFINED BY THE SCHOOL SYSTEM.
- d. FULL TIME AUTHORIZATION MAY OCCUR IF AN ADULT CARETAKER OR TEEN PARENT IS ENGAGED IN ANY OTHER ELIGIBLE ACTIVITY PART-TIME.

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# Notice of Rulemaking Hearing

**Tracking number**

2014-00884

**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**

10/10/2014

**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 (2013)

## Contact information

**Name**

Judi Carey

**Title**

MSB Coordinator

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303-866-4416

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## **COLORADO DEPARTMENT OF HEALTH CARE POLICY & FINANCING**

1570 Grant Street, Denver, CO 80203-1818 • (303) 866-2993 • (303) 866-4411 Fax • (303) 866-3883 TTY

John Hickenlooper, Governor • Susan E. Birch, MBA, BSN, RN, Executive Director

August 31, 2014

The Honorable Scott Gessler  
Secretary of State  
1560 Broadway, 2nd Floor  
Denver, Colorado 80203

Dear Mr. Gessler:

Attached is the Notice of Proposed Rules concerning Medical Assistance rules to be considered for final adoption at the October 2014 meeting of the Medical Services Board of the Department of Health Care Policy and Financing. The meeting will be held on Friday, October 10, 2014, beginning at 9:00 A.M., in the seventh floor conference room at the 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.

Sincerely,

Judi Carey,  
Coordinator

attachments



## **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, October 10, 2014, beginning at 9:00 a.m., in the seventh floor conference room at the 303 East 17<sup>th</sup> 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, tel. (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 internet at [HCPF: +Meeting Schedule](#).

### **MSB 14-07-03-A. Revision to the Medical Assistance Provider Relations and Dental Program Division Rule Concerning Child Dental Services, section 8.202**

Medical Assistance. Colorado currently provides a dental benefit to children 20 years of age and younger in the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program. However, the Department engaged in a Benefits Collaborative Process to define the amount, scope and duration of Dental Services for Children. This rule therefore implements the recommendations and policies that were developed through that process. The authority for this rule is contained in, 25.5-1-301 through 25.5-1-303, C.R.S. (2013).

### **MSB 14-06-25-A, Revision to the Medical Assistance Health Program Services and Supports Rule Concerning Amount, Scope and Duration of Ambulatory Surgery Centers, Section 8.570.3.D**

Medical Assistance. This rule change will define the amount scope and duration of the Ambulatory Surgery Center Medicaid benefit. In order to define amount, scope and duration, the Department is amending the existing Ambulatory Surgery Center rule to place all of the substantive content from the Benefit Coverage Standards into rule. Previously, the Department defined amount, scope and duration of these benefits and incorporated by reference the Benefit Coverage Standards (policy documents) into rule. However, the Office of Legislative Legal Services (OLLS) suggested, and the Committee on Legal Services (CLS) determined and ruled, that this use of the Incorporation by Reference statute was improper. The Department has gone through a detailed analysis to ensure that the rule amendment does not change any of the substantive content of the original Benefit Coverage Standard. The authority for this rule is contained in 25.5-1-301 through 25.5-1-303, C.R.S. (2013).

# Notice of Rulemaking Hearing

**Tracking number**

2014-00900

**Department**

500,1008,2500 - Department of Human Services

**Agency**

2506 - Food Assistance Program (Volume 4B)

**CCR number**

10 CCR 2506-1

**Rule title**

RULE MANUAL VOLUME 4B, FOOD ASSISTANCE

## Rulemaking Hearing

**Date**

10/03/2014

**Time**

10:00 AM

**Location**

Colorado Department of Human Services, Conference Room 4A/B, 1575 Sherman Street, Denver, CO 80203

**Subjects and issues involved**

#14-8-12-1: Food Assistance Federal Fiscal Year 2015 Standard Utility Allowance Update and Cost of Living Adjustments

**Statutory authority**

26-1-107; 26-1-109; 26-1-111; 26-2-301; 26-2-302, C.R.S. (2013); 7 CFR 273.9(a), (d)(1)(i); (d)(6)(ii), (iii); 7 CFR 273.10(e)(2)(ii)(C), (4)(i); 7 CFR 273.12(e); 2014 Farm Bill

## Contact information

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**Title**

Division of Food and Energy Assistance

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Title of Proposed Rule: Food Assistance Federal Fiscal Year 2015 Standard Utility Allowance Update and Cost of Living Adjustments

Rule-making#: 14-8-12-1

Office/Division or Program: Rule Author: Karen Dyke  
Office of Economic Security/  
Division of Food and Energy  
Assistance

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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.)*

The proposed rule change is necessary to be in compliance with federal regulations and serves two purposes:

- A. The first purpose is to revise five (5) Food Assistance Program rules (10 CCR 2506-1) to outline the Federal Fiscal Year (FFY) 2015 income eligibility standards and deductions that are adjusted annually to be effective each October 1<sup>st</sup>. The adjustments are based on a cost of living adjustment (COLA) as determined by the United States Department of Agriculture, Food and Nutrition Service (USDA, FNS). Colorado received the FFY15 COLA adjustments on August 4, 2015. The following eligibility standards and deductions will be updated:
- Gross income standard for one hundred thirty percent (130%), one hundred sixty five percent (165%), and two hundred percent (200%) of the Federal Poverty Level (FPL)
  - Net income standard for 100% of the FPL
  - Standard deduction
  - Maximum shelter deduction
  - Maximum and minimum benefit allotments

The Food Assistance Program proposes revising the following five (5) rules:

1. Revise Section 4.207.3, "Benefit Allotment," to outline the FFY15 maximum and minimum benefit allotments.
2. Revise Section 4.401.1,C, "Gross Income Eligibility Determination," to incorporate the FFY15 gross monthly income eligibility standard for 130%, 165%, and 200% of the Federal Poverty Level (FPL).
3. Revise Section 4.401.2, D, "Net Income Eligibility Determination," to incorporate the FFY15 net monthly income eligibility standard for 100% of the FPL.
4. Revise Section 4.407.1, "Standard Deduction," to incorporate the FFY15 standard deduction.
5. Revise Section 4.407.3, B, "Excess Shelter Deduction," to incorporate the FFY15 shelter deduction cap.

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Initial Review 09/05/2014

Final Adoption 10/03/2014

Proposed Effective Date 10/01/2014

EMERGENCY Adoption 09/05/2014

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## **DOCUMENT 3**

[Note: "Strikethrough" indicates deletion from existing rules and "all caps" indicates addition of new rules.]

Title of Proposed Rule: Food Assistance Federal Fiscal Year 2015 Standard Utility Allowance Update and Cost of Living Adjustments

Rule-making#: 14-8-12-1

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**STATEMENT OF BASIS AND PURPOSE** (continued)

- B. The second purpose is to revise Section 4.407.31, A-D, "Four-Tiered Mandatory Standard Utility Allowance," to incorporate the FFY 2015 standard utility allowances (SUA). Federal regulation 7 CFR 273.9(d)(6)(iii)(B) requires states to annually review its standard utility allowance and to make adjustments based on changes in the current cost of living.

The Colorado Food Assistance Program utilizes a four-tiered mandatory Standard Utility Allowance when determining a household's shelter deduction and food assistance allotment. Households with income and who are responsible for paying utility costs are eligible to receive a utility deduction based on one of the four tiers.

Colorado received federal approval to continue to utilize the Consumer Price Index for all Urban Consumers (CPI-U) to determine the FFY 2015 SUA amounts, which resulted in a 1.88% increase to each of the four tiers when using CPI-U data from May 2013 through June 2014.

The FFY14 SUA amounts, which are currently in rule, along with the FFY15 SUA amounts, are as follows:

SUA Tier	Rule	FFY14	FFY15
Heating and Cooling Utility Allowance (HCUA)	Section 4.407.31, A, 4	\$453	\$462
Basic Utility Allowance (BUA)	Section 4.407.31, B, 3	\$286	\$291
One Utility Allowance (OUA)	Section 4.407.31, C, 3	\$54	\$55
Telephone Allowance	Section 4.407.31, D, 2	\$73	\$74

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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: An emergency rule-making is necessary in order to maintain compliance with federal regulations regarding the FFY 2015 SUA and COLA increases. These changes must be promulgated into rule by the mandatory implementation date of October 1, 2014.

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Authority for Rule:

State Board Authority: 26-1-107, C.R.S. (2012) - State Board to promulgate rules; 26-1-109, C.R.S. (2013) - state department rules to coordinate with federal programs; 26-1-111, C.R.S. (2013) - state department to promulgate rules for public assistance and welfare activities.

Program Authority: (give federal and/or state citations and a summary of the language authorizing the rule-making)  
26-2-301, C.R.S. (2013) - designates the Colorado Department of Human Services as the responsible agency to administer the Food Assistance Program in the state of Colorado;  
26-2-302, C.R.S. (2013) - prohibits any interference that would prevent the Colorado Department of Human Services from complying with federal mandates prescribed under the federal "Food Stamp Act" as amended.

Title of Proposed Rule: Food Assistance Federal Fiscal Year 2015 Standard Utility Allowance Update and Cost of Living Adjustments

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**STATEMENT OF BASIS AND PURPOSE** (continued)

Agricultural Act of 2014 (2014 Farm Bill) - federal program authority ;  
7 CFR 273.9(a) - federal regulations pertaining to income eligibility thresholds for the program ;  
7 CFR 273.9(d)(1)(i) - federal regulations pertaining to the standard deduction;  
7 CFR (d)(6)(ii) - federal regulations pertaining to the maximum shelter deduction;  
7 CFR (d)(6)(iii) - federal regulations pertaining to the maximum standard utility allowances;  
7 CFR 273.10(e)(4)(i) - federal regulations pertaining to the maximum Food Assistance allotment levels.;  
7 CFR 273.10(e)(2)(ii)(C) - federal regulations pertaining to the minimum Food Assistance allotment levels for eligible one and two person households;  
7 CFR 273.12(e) - federal regulations pertaining to mass changes.

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Does the rule incorporate material by reference?

<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No
<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No

Does this rule repeat language found in statute?

If yes, please explain.

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*The program has sent this proposed rule-making package to which stakeholders?*

Office of Economic Security Sub-PAC; Food Assistance Performance Improvement Plan monthly meeting which consists of representatives from the ten largest counties

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Attachments:

Regulatory Analysis

Overview of Proposed Rule

Stakeholder Comment Summary

Title of Proposed Rule: Food Assistance Federal Fiscal Year 2015 Standard Utility Allowance Update and Cost of Living Adjustments

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## **REGULATORY ANALYSIS**

*(complete each question; answers may take more than the space provided)*

### **1. List of groups impacted by this rule:**

*Which groups of persons will benefit, bear the burdens or be adversely impacted by this rule?*

Food Assistance Program participants and applicants will be affected by this rule change.

### **2. Describe the qualitative and quantitative impact:**

*How will this rule-making impact those groups listed above? How many people will be impacted? What are the short-term and long-term consequences of this rule?*

Applicants and participants in the Food Assistance Program will not be adversely affected by this rule change. Increases to the standard deduction, shelter expense deduction, four-tiered standard utility allowance, benefit allotment amounts, and income threshold guidelines have the potential to increase current benefit amounts for participants and increase program accessibility for future applicants. Food assistance benefits will not be decreased as a result of the FFY15 adjustments.

### **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)*

Costs associated with the Colorado Benefits Management System to incorporate these changes have already been allocated in the system maintenance budget.

#### **County Fiscal Impact**

There are no county fiscal impacts associated with this rule change.

#### **Federal Fiscal Impact**

There are no federal fiscal impacts associated with this rule change.

#### **Other Fiscal Impact (such as providers, local governments, etc.)**

There are no other fiscal impacts associated with this rule change.

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**REGULATORY ANALYSIS** (continued)

**4. Data Description:**

*List and explain any data, such as studies, federal announcements, or questionnaires, which were relied upon when developing this rule?*

Federal memorandums from the Food and Nutrition Service as well as data from the 2014 Consumer Price Index for all Urban Consumers were used in the 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 available alternatives exist to incorporate these program changes state-wide and be in compliance with federal requirements.

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### **OVERVIEW OF PROPOSED RULE**

Compare and/or contrast the content of the current regulation and the proposed change.

<u>Section Numbers</u>	<u>Current Regulation</u>	<u>Proposed Change</u>	<u>Stakeholder Comment</u>			
4.207.3, E	The maximum monthly Food Assistance benefit allotments and the minimum allotment for households are represented in table form	Add a column to each table representing the increases for FFY 2015	—	Yes	<u>X</u>	No
4.401.1, C	The gross income limits for households subject to income thresholds for 130%, 165%, and 200% of the federal poverty level are represented in table form	Add an additional table representing the gross income limits assessed for FFY 2015 and add that the FFY 2014 values are effective through September 30, 2014	—	Yes	<u>X</u>	No
4.401.2, D	The net income limits reflecting 100% of the federal poverty level are represented in table form as applicable to each household size	Add an additional table representing the net income limits assessed for FFY 2015 and add that the FFY 2014 values are effective through September 30, 2014	—	Yes	<u>X</u>	No
4.407.1	The standard deduction that applies to all households is represented in table form	Add a row to the existing table to include values for FFY 2015	—	Yes	<u>X</u>	No
4.407.3	A table format outlines the highest possible shelter expense deduction for households whose monthly shelter expenses exceed 50% of the total countable income after income deductions are applied. This is referred to as the shelter deduction cap.	Add a row to the existing table to incorporate FFY 2015 increases.	—	Yes	<u>X</u>	No



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4.407.31, A, 4	The standard utility allowance is based on a four tiered model per utility type. For households incurring heating and cooling costs, the HCUA deduction is granted.	Add a row to the existing table to incorporate FFY 2015 increases.	<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No
4.407.31, B, 3	For households incurring more than one utility expense which does not include heating and cooling, the BUA deduction is granted.	Add a row to the existing table to incorporate FFY 2015 increases.	<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No
4.407.31, C, 3	For households incurring just one non heating or cooling or telephone expense, the OUA deduction is granted.	Add a row to the existing table to incorporate FFY 2015 increases.	<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No
4.407.31, D, 2	For households incurring only a telephone expense, the telephone allowance is granted.	Add a row to the existing table to incorporate FFY 2015 increases.	<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No

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## **STAKEHOLDER COMMENT SUMMARY**

### **DEVELOPMENT**

The following individuals and/or entities were included in the development of these proposed rules (such as other Program Areas, Legislative Liaison, and Sub-PAC):

Additional program areas were not solicited for input in the development of these proposed rules as the cost of living adjustments are determined by USDA, FNS, and the SUA amounts are based on federal approval. Past guidance from the Office of Legislative Legal Services and the Food and Nutrition Service has supported the practice of incorporating SUA and COLA changes into state rule.

### **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:

Office of Economic Security Sub-PAC;  
Food Assistance Performance Improvement Plan monthly meeting which consists of representatives from the ten largest counties

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 ☒ No

Have these rules been reviewed by the appropriate Sub-PAC Committee?

☐ Yes ☒ No

Date presented \_September \_\_\_\_\_. Were there any issues raised? \_\_\_\_ Yes \_\_\_\_ No

If not, why. These changes will be presented to the Sub-PAC committee in September.

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 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.*

(10 CCR 2506-1)

**4.207.3 Benefit Allotment**

- A. After eligibility has been established, the monthly Food Assistance benefit allotment will be determined. The state automated system will compute the household's allotment. The following formula shall be used to determine a household's benefit allotment.
1. Multiply the net monthly income by thirty percent (30%).
  2. Round the product up to the next whole dollar if it ends in one (1) through ninety-nine (99) cents.
  3. Subtract the result from the maximum benefit allowed for the appropriate household size, as shown in C, below.
- B. Except for an initial month, if the allotment for a one- or two-person household is less than ten dollars (\$10), round the allotment up to the minimum benefit allowed for one- or two-person household. If the calculation of benefits for an initial month is less than ten dollars (\$10), then no benefits shall be issued to the household for the initial month.
- C. The Food Assistance maximum and minimum monthly benefit allotment tables will be adjusted as announced by the United States Department of Agriculture (USDA, Food and Nutrition Service (FNS)).

HOUSEHOLD SIZE	MAXIMUM MONTHLY ALLOTMENT EFFECTIVE APRIL 1, 2009	MAXIMUM MONTHLY ALLOTMENT EFFECTIVE NOVEMBER 1, 2013	MAXIMUM MONTHLY ALLOTMENT EFFECTIVE OCTOBER 1, 2014
1	\$ 200	\$ 189	\$ 194
2	\$ 367	\$ 347	\$ 357
3	\$ 526	\$ 497	\$ 511
4	\$ 668	\$ 632	\$ 649
5	\$ 793	\$ 750	\$ 771
6	\$ 952	\$ 900	\$ 925
7	\$1,052	\$ 995	\$1,022
8	\$1,202	\$1,137	\$1,169
EACH ADDITIONAL PERSON	+ \$150	+ \$142	+\$146

HOUSEHOLD SIZE	MINIMUM MONTHLY ALLOTMENT EFFECTIVE APRIL 1, 2009	MINIMUM MONTHLY ALLOTMENT EFFECTIVE NOVEMBER 1, 2013	MINIMUM MONTHLY ALLOTMENT EFFECTIVE OCTOBER 1, 2014
1-2	\$16	\$15	\$16

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#### 4.401.1 Gross Income Eligibility Determination

A household, except those eligible under basic categorical eligibility, that does not include a member who is elderly or a person with a disability, as defined in Section 4.304.41, may be eligible if its monthly non-exempt earned and unearned income does not exceed the gross income level. Except for households that are eligible under basic categorical eligibility, households without a person who is elderly and/or a person with a disability shall be ineligible for Food Assistance if its monthly income, after deducting any legally obligated child support payments and no other deductions, exceeds the gross income level. In such cases, there is no computation to consider deductions. Instead, a Notice of Action form is completed to deny the household.

- A. The gross income level for households that do not include a member who is elderly and/or a person with a disability is one hundred thirty percent (130%) of the federal poverty level.
- B. The gross income level for households eligible under expanded categorical eligibility that include a member who is elderly or a person with a disability is two hundred percent (200%) of the federal poverty level. If the household exceeds 200% of the federal poverty level, the household shall be reviewed under basic categorical eligibility rules and/or standard eligibility rules as outlined in Section 4.206. If the household is eligible under standard eligibility rules, the household shall only be subject to the net income level of one hundred percent (100%) of the federal poverty level.

#### C. Gross Income Levels

EFFECTIVE OCTOBER 1, 2014, THE GROSS INCOME LEVEL FOR ONE HUNDRED THIRTY PERCENT (130%), TWO HUNDRED PERCENT (200%), AND ONE HUNDRED SIXTY-FIVE PERCENT (165%) OF THE FEDERAL POVERTY LEVEL FOR THE CORRESPONDING HOUSEHOLD SIZE IS AS FOLLOWS:

HOUSEHOLD SIZE	130% GROSS INCOME LEVEL	200% GROSS INCOME LEVEL	165% GROSS INCOME LEVEL
1	\$1,265	\$1,946	\$1,605
2	\$1,705	\$2,622	\$2,163
3	\$2,144	\$3,300	\$2,722
4	\$2,584	\$3,976	\$3,280
5	\$3,024	\$4,652	\$3,838
6	\$3,464	\$5,330	\$4,396
7	\$3,904	\$6,006	\$4,955
8	\$4,344	\$6,682	\$5,513
EACH ADDITIONAL PERSON	+ \$440	+ \$678	+ \$559

Effective October 1, 2013 **THROUGH SEPTEMBER 30, 2014**, the gross income level for one hundred thirty percent (130%), two hundred percent (200%), and one hundred sixty-five percent (165%) of the federal poverty level for the corresponding household size is as follows:

<b>Household Size</b>	<b>130% Gross Income Level</b>	<b>200% Gross Income Level</b>	<b>165% Gross Income Level</b>
1	\$1,245	\$1,916	\$1,580
2	\$1,681	\$2,586	\$2,133
3	\$2,116	\$3,256	\$2,686
4	\$2,552	\$3,926	\$3,239
5	\$2,987	\$4,596	\$3,791
6	\$3,423	\$5,266	\$4,344
7	\$3,858	\$5,936	\$4,897
8	\$4,294	\$6,606	\$5,450
Each additional person	+ \$436	+ \$670	+ \$553

Effective October 1, 2012 through September 30, 2013, the gross income level for one hundred thirty percent (130%), two hundred percent (200%), and one hundred sixty-five percent (165%) of the federal poverty level for the corresponding household size is as follows:

<b>Household Size</b>	<b>130% Gross Income Level</b>	<b>200% Gross Income Level</b>	<b>165% Gross Income Level</b>
1	\$1,211	\$1,862	\$1,536
2	\$1,640	\$2,522	\$2,081
3	\$2,069	\$3,182	\$2,625
4	\$2,498	\$3,842	\$3,170
5	\$2,927	\$4,502	\$3,714
6	\$3,356	\$5,162	\$4,259
7	\$3,785	\$5,822	\$4,803
8	\$4,214	\$6,482	\$5,348
Each additional person	+ \$429	+ \$660	+ \$545

#### **4.401.2 Net Income Eligibility Determination**

- A. All households, except those who are eligible under basic categorical eligibility, whose income does not exceed the gross income level as outlined in this section shall have their eligibility for benefits computed allowing the earned income, standard, dependent care, medical, and shelter deductions, as appropriate. The household shall be eligible only if its monthly gross income, less the allowable Food Assistance deductions, is below the maximum net eligibility level for their household size. A household that exceeds the net eligibility level must be denied, except for households eligible under basic categorical eligibility rules.
- B. A household that is ineligible for either expanded or basic categorical eligibility shall be eligible for Food Assistance benefits if its monthly nonexempt earned and unearned income, less all applicable deductions, including the earned income, standard, medical, dependent care, and unlimited excess shelter deduction, does not exceed the maximum net income level.
- C. If a household contains a member who is fifty-nine (59) years old on the date of application, but who will become sixty (60) years of age before the end of the month of application, the local office shall determine the household's eligibility as if the person is sixty (60) years of age.
- D. Net Income Levels

EFFECTIVE OCTOBER 1, 2014, THE NET INCOME LEVEL OF ONE HUNDRED PERCENT (100%) OF THE FEDERAL POVERTY LEVEL FOR THE CORRESPONDING HOUSEHOLD SIZE IS AS FOLLOWS:

HOUSEHOLD SIZE	100% NET INCOME LEVEL
1	\$973
2	\$1,311
3	\$1,650
4	\$1,988
5	\$2,326
6	\$2,665
7	\$3,003
8	\$3,341
EACH ADDITIONAL MEMBER	+ \$339

Effective October 1, 2013 **THROUGH SEPTEMBER 30, 2014**, the net income level of one hundred percent (100%) of the federal poverty level for the corresponding household size is as follows:

Household Size	100% Net Income Level
1	\$958
2	\$1,293

3	\$1,628
4	\$1,963
5	\$2,298
6	\$2,633
7	\$2,968
8	\$3,303
Each additional member	+ \$335

Effective October 1, 2012 through September 30, 2013, the net income level of one hundred percent (100%) of the federal poverty level for the corresponding household size is as follows:

Household Size	100% Net Income Level
1	\$931
2	\$1,261
3	\$1,591
4	\$1,921
5	\$2,251
6	\$2,581
7	\$2,911
8	\$3,241
Each additional member	+ \$330

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#### 4.407.1 Standard Deduction

A standard deduction of 8.31% of the federal poverty income guidelines for the household size will be used to calculate the amount that is allowed to all households. The established standard amount will be adjusted annually as announced by the Food and Nutrition Service, USDA. The calculation of 8.31% of the federal poverty income guidelines for eligible members will be used for all households up to the household size of six (6). All households with six (6) or more eligible members will use the six (6) person standard deduction.

STANDARD DEDUCTION AMOUNT				
Household Size	1-3	4	5	6+
Effective October 1, 2012	\$149	\$160	\$187	\$214

Effective October 1, 2013	\$152	\$163	\$191	\$219
<b>EFFECTIVE OCTOBER 1, 2014</b>	<b>\$155</b>	<b>\$165</b>	<b>\$193</b>	<b>\$221</b>

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#### 4.407.3 Excess Shelter Deduction

- A. Households shall receive a deduction for the allowable monthly shelter costs that are in excess of fifty percent (50%) of the household's income after all other deductions. Shelter expenses are allowed as billed to a household member or as paid or billed to a disqualified individual. Shelter costs that are paid by or billed to a person disqualified for fraud shall be allowed as a deduction for eligible members in their entirety. Shelter costs, paid or billed to a person disqualified for being an ineligible non-citizen or for failure to provide a Social Security Number shall be divided evenly among all household members and the disqualified individual. All except the disqualified person's pro rata share is counted as a shelter cost of the household.
- B. A shelter deduction cap, as specified below, applies to households that do not contain person who is elderly and/or a person with a disability as defined in Section 4.304.41. Those households containing a person who is elderly and/or a person with a disability shall receive an excess shelter deduction for the monthly cost of shelter that exceeds fifty percent (50%) of the household's monthly income after all other applicable deductions.

<b>SHELTER DEDUCTION CAP</b>	
Effective October 1, 2012	\$469
Effective October 1, 2013	\$478
<b>EFFECTIVE OCTOBER 1, 2014</b>	<b>\$490</b>

- C. Homeless households shall be entitled to use a standard estimate of shelter expenses for households in which all members are homeless and are not receiving free shelter throughout the calendar month. The Food and Nutrition Service, USDA, has provided a current estimate of one hundred forty-three dollars (\$143) and shall update this figure annually when the shelter cap for other households is adjusted.

All homeless households that incur or reasonably expect to incur shelter costs during a month shall be eligible for the estimate unless higher shelter costs are verified, at which point the household may use actual shelter costs rather than the estimate. If a homeless household has difficulty in obtaining traditional types of verification of shelter costs, the eligibility technician shall use the prudent person principle in determining if verification obtained is adequate. Homeless households that incur no shelter costs during the month shall not be eligible for the standard estimate.

- D. A household may claim both the costs of its actual residence and those for a home that is not occupied by the household because of employment or training away from home; or illness; or abandonment caused by a natural disaster or casualty loss.

For costs of a home vacated by the household to be included in the household's shelter costs, the household must intend to return to the home; the current occupants of the home, if any, must not be claiming the shelter costs for Food Assistance purposes; and the home must not be leased or rented during the absence of the household.



E. Allowable shelter costs shall include only the following:

1. Continuing charges for the shelter, including rent, mortgages, condo, and association fees or other continuing charges leading to the ownership of the shelter such as loan repayments for the purchase of a mobile home, including interest on such payments.
  - a. If a homeowner has drawn money down in a reverse mortgage and now wants to make monthly payments to repay some of the amount drawn, the repayment shall be considered a charge leading to the ownership of a home, such as a loan repayment. To be deductible, the charge must be continuing. If the household expects to make monthly payments, the client's charges are considered to be continuing, and the repayments shall be allowed as a shelter cost. If the repayment is not continuing, it does not meet the requirement and the payments shall not be allowed as a shelter deduction.
  - b. Payments on loans secured by a lien placed on the property by the lending institution, such as a second mortgage or home equity loan, shall be considered a continuing charge for shelter. Payments on unsecured loans or personal loans are not considered shelter costs.
  - c. Expenses incurred to keep a pet that are billed separately from the household's rent are not allowable as shelter deductions.
2. Property taxes, state and local assessments, and insurance on the structure itself, but not separate costs for insuring furniture or personal belongings.
3. Charges to repair or rebuild a home substantially damaged or destroyed due to a natural disaster such as a fire or flood. Allowable expenses are those that have not been, and will not be, reimbursed by private or public relief agencies, insurance companies, or any other source.
4. Utility costs which include charges for heating and cooking fuel; water and sewer; well installation and maintenance; septic tank installation and maintenance; garbage and trash collection fees; and, fees charged by the utility provider for initial installation of the utility.
5. A telephone allowance for one telephone or the cost of telephone service that is associated with a specific device, which includes land-line service or cellular service, including disposable cell phones, and voice over internet protocol (VOIP). Households are not allowed to deduct the cost of pay phones and of phone cards that are not associated with a specific device. One-time deposits shall not be included as shelter costs. With regard to VOIP, only the cost of VOIP is deductible; other charges such as Internet connectivity fees and monthly cable/internet fees are not deductible.

#### **4.407.31 Four-Tiered Mandatory Standard Utility Allowance**

Effective October 1, 2008, a four tiered mandatory standard utility allowance deduction was implemented in determining a household's excess shelter deduction. Households cannot claim actual utility expenses and are only entitled to one of the four utility allowances. The four utility allowances shall be reviewed annually and adjusted each year, based on Federal approval, to reflect Colorado's cost of utilities. No utility expenses can be allowed as an income exclusion for self-employed households when a mandatory utility allowance is given to the household.

When determining expedited eligibility, the appropriate utility allowance shall be applied when establishing the household's shelter costs.

The four (4) tiers are as follows:

A. Heating and Cooling Utility Allowance (HCUA)

1. "Cooling costs" are defined as utility expenses relating to the operation of air conditioning systems, room air conditioners, swamp coolers, or evaporative coolers. Fans are not an allowable cooling cost. A heating and cooling utility allowance (HCUA) is available only to households who:
  - a. Incur or anticipate a heating or cooling expense separate and apart from their rent or mortgage;
  - b. Received a Low-Income Energy Assistance Program (LEAP) payment within the previous twelve (12) month period, regardless of whether or not the individual is still residing at the address for which he/she received the LEAP payment;
  - c. Live in private rental housing and are billed by their landlords on the basis of individual usage or are charged a flat rate separately from their rent for heating and cooling;
  - d. Share a residence and who incur at least a portion of the heating or cooling cost; each household will be entitled to the full HCUA; or,
  - e. Live in public housing and are responsible for excess heating and/or cooling costs.
2. A Food Assistance household, which incurs or anticipates a heating or cooling expense on an irregular basis, may continue to receive the HCUA between billing periods.
3. Operation of a space heater, electric blanket, heat lamp, cooking stove and the like when used as a supplemental heating source are allowable costs when determining eligibility for the basic utility allowance (BUA), but do not qualify a household for the HCUA.
4. The HCUA standard is as follows:

Effective October 1, 2012	\$448
Effective October 1, 2013	\$453
<b>EFFECTIVE OCTOBER 1, 2014</b>	<b>\$462</b>

**B. Basic Utility Allowance (BUA)**

1. The Basic Utility Allowance (BUA) is mandated for any households that are not entitled to the HCUA and that incur at least two (2) non-heating or non-cooling utility costs, such as electricity, water, sewer, trash, cooking fuel, or telephone.
2. If more than one assistance group shares in paying non-heating or non-cooling utility costs of the dwelling, the full BUA will be allowed for each assistance group sharing in the utility costs.
3. The BUA standard is as follows:

Effective October 1, 2012	\$283
Effective October 1, 2013	\$286
<b>EFFECTIVE OCTOBER 1, 2014</b>	<b>\$291</b>

**C. One Utility Allowance (OUA)**

1. The OUA is mandated for any household that is not entitled to the HCUA or BUA but is responsible for only one (1) non-heating or one (1) non-cooling utility expense. The OUA is not allowed if the household's only utility expense is a telephone.
2. If more than one (1) assistance group shares in paying one (1) non-heating or one non-cooling utility costs of the dwelling, the full OUA will be allowed for each assistance group sharing in the utility costs.
3. The OUA standard is as follows:

Effective October 1, 2012	\$53
Effective October 1, 2013	\$54
<b>EFFECTIVE OCTOBER 1, 2014</b>	<b>\$55</b>

#### D. Telephone Allowance

1. The telephone allowance is available to households whose only utility expense is for a telephone. If more than one assistance group shares in paying the telephone expense and that is the only utility expense of the dwelling, the full phone standard will be allowed for each assistance group sharing in the telephone expense.
2. The telephone allowance is as follows:

Effective October 1, 2012	\$72
Effective October 1, 2013	\$73
<b>EFFECTIVE OCTOBER 1, 2014</b>	<b>\$74</b>

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# Notice of Rulemaking Hearing

**Tracking number**

2014-00905

**Department**

500,1008,2500 - Department of Human Services

**Agency**

2509 - Social Services Rules (Volume 7; At-risk Adults, Child Welfare, Child Care Facilities)

**CCR number**

12 CCR 2509-1

**Rule title**

RULE MANUAL VOLUME 7 GENERAL INFORMATION AND POLICIES

## Rulemaking Hearing

**Date**

10/03/2014

**Time**

10:00 AM

**Location**

Colorado Department of Human Services, Conference Room 4A/B, 1575 Sherman Street, Denver, CO 80203

**Subjects and issues involved**

#14-3-4-1: Child Protection and Child Welfare Rule Rewrite, Realignment, and Modification to Special Economic Assistance (SEA)

**Statutory authority**

19-1-116(1.5), (2)(b)(I); 26-1-107; 26-1-109; 26-1-111;26-5-110; 26-5.5-103(1); 26-5.5-104(2)(b), (4)(a)(I); 26-5-201, C.R.S. (2013); 42 USC 671, Sec. 471(a)(28)

**Contact information****Name**

Judy Rodriguez

**Title**

Division of Child Welfare

**Telephone**

303-866-4054

**Email**

judy.rodriquez@state.co.us

Title of Proposed Rule: Child Protection and Child Welfare Rule Rewrite, Realignment, and Modification to Special Economic Assistance (SEA)

Rule-making#: 14-3-4-1

Office/Division or Program:  
Office of Children, Youth and  
Families/Division of Child  
Welfare

Rule Author: Judy Rodriguez

Phone: 303-866-4054

E-Mail:  
judy.rodriguez@state.co.us

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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.)*

The purpose for the rule changes are to:

- Remove outdated goals, definitions and language;
- Re-structure rules to be more easily understood by workers and supervisors;
- Add new rules that have been approved by the Child Welfare Sub-Policy Advisory Committee (Sub-PAC) covering:
  - Jurisdiction
  - New safety and risk assessment
  - New definitions
  - Case closure summaries
  - Domestic violence
- Increase the Core Services Program Special Economic Assistance (SEA) limit from \$400 per family to \$800 per family, per year, to align with the cost of living increases.

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An emergency rule-making (which waives the initial Administrative Procedure Act noticing requirements) is necessary:

<input type="checkbox"/>
<input type="checkbox"/>

to comply with state/federal law and/or

to preserve public health, safety and welfare

Explain:

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Initial Review	<u>09/05/2014</u>	Final Adoption	<u>10/03/2014</u>
Proposed Effective Date	<u>12/01/2014</u>	EMERGENCY Adoption	<u>N/A</u>

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## **Document 5**

*[Note: "Strikethrough" indicates deletion from existing rules and "all caps" indicates addition of new rules.]*

Title of Proposed Rule: Child Protection and Child Welfare Rule Rewrite, Realignment, and Modification to Special Economic Assistance (SEA)

Rule-making#: 14-3-4-1

Office/Division or Program: Rule Author: Judy Rodriguez  
Office of Children, Youth and Families/Division of Child Welfare

Phone: 303-866-4054

E-Mail:  
judy.rodriguez@state.co.us

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**STATEMENT OF BASIS AND PURPOSE** (continued)

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Authority for Rule:

State Board Authority: 26-1-107, C.R.S. (2013) - State Board to promulgate rules; 26-1-109, C.R.S. (2013) - state department rules to coordinate with federal programs; 26-1-111, C.R.S. (2013) - 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. (2013) - alternative services to prevent continued involvement with county child welfare system, including goals in alternative services in plan;  
26-5-110, C.R.S. (2013) - requires rule-making (regarding guardianship);  
26-5.5-103(1), C.R.S.. (2013) - authorizes State Board to establish "at risk" criteria;  
26-5.5-104(2)(b), (4)(a)(I), C.R.S. (2013) - expands to families at risk of being involved in the child welfare system;  
26-5-201, C.R.S. (2013) - provision of Child Welfare Services--system reform goal;  
42 USC 671, Sec. 471(a)(28) - authorizes rule-making regarding child welfare

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Does the rule incorporate material by reference?

<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No
<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No

Does this rule repeat language found in statute?

If yes, please explain.

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*The program has sent this proposed rule-making package to which stakeholders?*

Colorado Department of Human Services (CDHS) Policy Advisory Committee (PAC), the Division of Child Welfare PAC-Subcommittee members, CDHS Administrative Review Division, County Departments of Human/Social Services, Office of Information and Technology - Colorado Trails Automation, Child Protection Task Group, Office of the Child's Representative, Child Protection Ombudsman's office, Rocky Mountain Children's Law Center, Child Welfare Executive Leadership Council, Child Welfare Training Academy

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Attachments:

Regulatory Analysis

Overview of Proposed Rule

Stakeholder Comment Summary

Title of Proposed Rule: Child Protection and Child Welfare Rule Rewrite, Realignment, and Modification to Special Economic Assistance (SEA)

Rule-making#: 14-3-4-1

Office/Division or Program:  
Office of Children, Youth and  
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Welfare

Rule Author: Judy Rodriguez

Phone: 303-866-4054

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## **REGULATORY ANALYSIS**

*(complete each question; answers may take more than the space provided)*

### **1. List of groups impacted by this rule:**

*Which groups of persons will benefit, bear the burdens or be adversely impacted by this rule?*

Colorado's children and families will benefit from the proposed rule changes due to improved casework practice as a result of expectations being clear. Colorado Department of Human Services and the County Departments of Human Services caseworkers and supervisors will benefit from having clear expectations and rules that are easier to understand. There is no expectation of burden to county department staff in implementing the changes. Statewide, child welfare staff will be positively impacted having clear expectations and rules to use with county staff as a basis for training and technical assistance.

Children, youth, and families will benefit from this rule because it will allow counties the opportunity to provide a higher amount of Special Economic Assistance (SEA) in an effort for families to safely care for their children.

Counties who do not have available funding, and/or choose not to provide SEA, or the higher amount of SEA will continue with their current Child Welfare practices. Children, youth, and families that cannot access the increase of SEA may be adversely impacted.

### **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?*

This rule re-write will allow for the local county departments of human services to give better and more accurate guidelines for new child welfare caseworkers when working with families to insure the safety and well-being of children, youth and families. The rules currently do not completely align with the Colorado Children's Code. The goal is to update the rules to be in compliance with statutory requirements and to provide consistency to the State and county departments of human services.

The short-term positive impact/consequences of the increase option for SEA are that children/youth/families will receive the right services at the right time to keep their children safe.

The long-term positive impact/consequence are children/youth/families will be able to access an increase of SEA and mitigate families needing to maintain the least restrictive setting of the child. Providing the increase in SEA may enhance a family's ability to safely care for their children/youth, and prevent out of home placement.

### **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.*

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### **REGULATORY ANALYSIS** (continued)

State Fiscal Impact (*Identify all state agencies with a fiscal impact, including any Colorado Benefits Management System (CBMS) change request costs required to implement this rule change*)

The safety and risk assessment are going to be updated in Trails and this will impact workload, which is being absorbed by the Trails team.

County Fiscal Impact

No new county fiscal impact is anticipated since the increase for SEA is at the discretion of the county department.

Federal Fiscal Impact

There is no Federal fiscal Impact.

Other Fiscal Impact (*such as providers, local governments, etc.*)

There is no other 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 was a recent study from Colorado State University regarding the need and validation for a revised safety and risk tool that was used in the rule revision.

#### **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 at this time. It is important to align rule with statute to provide consistency to the county departments of human services.



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## **OVERVIEW OF PROPOSED RULES**

Compare and/or contrast the content of the current regulation and the proposed change.

<u>Section Numbers</u>	<u>Current Regulation</u>	<u>Proposed Change</u>	<u>Stakeholder Comment</u>			
7.000	General Information and Policies	Rename to Overview of Child Welfare Services	—	Yes	<input checked="" type="checkbox"/>	No
7.000.1	Description of General Information and Policies	Repeal and rename Program Areas and Definitions, move to 7.600	—	Yes	<input checked="" type="checkbox"/>	No
7.000.2	Federal Goals	Repeal and rename Definitions	—	Yes	<input checked="" type="checkbox"/>	No
7.000.3	Program Areas	Revise and renumber to 7.000.1	—	Yes	<input checked="" type="checkbox"/>	No
7.000.4	Target Groups	Revise and renumber to 7.000.1	—	Yes	<input checked="" type="checkbox"/>	No
7.000.5	Definitions – Child Care Services, Child Welfare Child Care, County Department, Independent Living Arrangement, Independent Living Plan, Provided Service, State Department, Supplemental Security Income, Supportive Activities,	Move and renumber to 7.000.2, A	—	Yes	<input checked="" type="checkbox"/>	No
7.000.5	Applicant, Application, Delinquent Child, Intake, Recipient, Safety	Repeal	—	Yes	<input checked="" type="checkbox"/>	No
7.000.5	Definitions – Child, Child Welfare Services, Client, Concurrent Planning, Emancipation from Foster Care, Emancipation Transition Plan, Fair Hearing, Family, Provider, Purchased Services, Reasonable Efforts, Sibling	Move to 7.000.2 and revise to align with Children's Code	—	Yes	<input checked="" type="checkbox"/>	No

Title of Proposed Rule: Child Protection and Child Welfare Rule Rewrite, Realignment, and Modification to Special Economic Assistance (SEA)

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<u>Section Numbers</u>	<u>Current Regulation</u>	<u>Proposed Change</u>	<u>Stakeholder Comment</u>			
7.000.5	Definitions – Alleged Victim, Caregiver, Delinquent Act, Domestic Violence, Emotional Abuse, Foster Care, Gray Area, Household, Juvenile, Mandated Reporter, Primary Caregiver, Risk, Severe Neglect-egregious, Severe Neglect-near fatal, Severe Physical Abuse-egregious, Severe Physical Abuse-near fatal, State automated case management system, Support Plan, Third Party Abuse, Youth	New Rule to include definitions of commonly-used language	—	Yes	<u>X</u>	No
7.000.6, A	County responsibility to administer program	Move to 7.601.1, A	—	Yes	<u>X</u>	No
7.000.6, B	County responsibility to use forms and report	Move to 7.601.1, B	—	Yes	<u>X</u>	No
7.000.6, C	County responsibility to advise residents	Revise and Move to 7.601.3, D	—	Yes	<u>X</u>	No
7.000.6, D	County responsibility to advise clients leaving the county	Revise and Move to 7.601.3, C	—	Yes	<u>X</u>	No
7.000.6, E	County responsibility to respond to requests from other counties	Move to 7.601.2 ,C	—	Yes	<u>X</u>	No
7.000.6, F	County responsibility to document	Move to 7.601.1,B	—	Yes	<u>X</u>	No
7.000.6, G	County responsibility for client contact	Move to 7.601.4, C	—	Yes	<u>X</u>	No
7.000.6, H, I	County responsibility for investigation	Move to 7.601.9, A-C	—	Yes	<u>X</u>	No
7.000.6, J	County responsibility to advise clients of responsibility to report	Revise and move to 7.601.3, B	—	Yes	<u>X</u>	No
7.000.6, K	County responsibility to advise clients	Revise and move to 7.601.3, A	—	Yes	<u>X</u>	No
7.000.6, L	County responsibility to use volunteers	Revise and move to 7.602.2	—	Yes	<u>X</u>	No

Title of Proposed Rule: Child Protection and Child Welfare Rule Rewrite, Realignment, and Modification to Special Economic Assistance (SEA)

Rule-making#: 14-3-4-1

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<u>Section Numbers</u>	<u>Current Regulation</u>	<u>Proposed Change</u>	<u>Stakeholder Comment</u>			
7.000.6, M-O	County responsibility to ensure personnel meet minimum qualifications	Move to 7.602.1 and add placeholder for hotline staff qualifications	—	Yes	<u>X</u>	No
7.000.7 and 7.000.71	Clients Rights, Anti-Discrimination	Repeal section header (Clients Rights) and revise Anti-Discrimination to section header and move to 7.604	—	Yes	<u>X</u>	No
7.000.71, N	Receipt of Referral – Intrafamilial or Third Party	Revise and Move to 7.103.1	—	Yes	<u>X</u>	No
7.000.72	Confidentiality	Move to 7.605.1	—	Yes	<u>X</u>	No
7.000.72, A	Confidentiality	Revise and Move to 7.605.1, A	—	Yes	<u>X</u>	No
7.000.72, B	Confidentiality – release of information	Move to 7.605.2, C	—	Yes	<u>X</u>	No
7.000.72, C	Confidentiality – obtaining permission	Move to 7.605.2, A	—	Yes	<u>X</u>	No
7.000.72, D	Civil/criminal proceeding	Move to 7.605.23, A	—	Yes	<u>X</u>	No
7.000.72, E	Confidential information, sorted and processed	Move to 7.605.1, B	—	Yes	<u>X</u>	No
7.000.72, F	Name of reporting party	Revise and move to 7.605.1, A, 5	—	Yes	<u>X</u>	No
7.000.72, G	Release of information to court	Move to 7.605.23, B	—	Yes	<u>X</u>	No
7.000.72, H	Confidential release of information restricted	Move to 7.605.2, B	—	Yes	<u>X</u>	No
7.000.72, I	County process for clients to access records	Move to 7.605.24	—	Yes	<u>X</u>	No
7.000.72, J	County shall share information	Revise and Move to 7.605.22, A	—	Yes	<u>X</u>	No
7.000.72, K,	Individuals participating in foster care review	Revise and Move to 7.605.22, B	—	Yes	<u>X</u>	No
7.000.72, L	Foster Care Review	Revise and Move to 7.605.22, B	—	Yes	<u>X</u>	No
7.000.72, M	Entering Confirmed Reports	Revise and Move to 7.605.21, A	—	Yes	<u>X</u>	No
7.000.72, N	Use of unconfirmed reports	Move to 7.103.1, A	—	Yes	<u>X</u>	No

Title of Proposed Rule: Child Protection and Child Welfare Rule Rewrite, Realignment, and Modification to Special Economic Assistance (SEA)

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Section Numbers	Current Regulation	Proposed Change	Stakeholder Comment			
			___	Yes	<u>X</u>	No
7.000.72, O	Use of confidential information for conflict resolution	Move to 7.605.25	___	Yes	<u>X</u>	No
7.000.72, P	Use of confidential information for county purposes.	Revise and Move to 7.605.4, A-B	___	Yes	<u>X</u>	No
7.000.72, Q	Background checks	Revise and Move to 7.605.22, C	___	Yes	<u>X</u>	No
7.000.72, R	Unauthorized release of confidential information	Move to 7.605.5	___	Yes	<u>X</u>	No
7.000.73	Fees Records and Reports	Move to 7.609	___	Yes	<u>X</u>	No
7.000.74	Local Dispute Resolution Process	Revise and move to 7.610	___	Yes	<u>X</u>	No
7.000.75	State Appeal	Move to 7.611	___	Yes	<u>X</u>	No
7.001	Prevention and Intervention Definitions	Revise and move to 7.200.1	___	Yes	<u>X</u>	No
7.001.1	Referral	Move to 7.200.14	___	Yes	<u>X</u>	No
7.001.11	Application	Repeal	___	Yes	<u>X</u>	No
7.001.2	Initial Functional Assessment	Move to 7.200.15	___	Yes	<u>X</u>	No
7.001.3	Eligibility Determination	Move to 7.200.1	___	Yes	<u>X</u>	No
7.001.4 and 7.001.41	Determination of Funding Source	Revise and Move to 7.601.8, 7.601.81	___	Yes	<u>X</u>	No
7.001.42	Title IV-E Adoption Assistance	Repeal	___	Yes	<u>X</u>	No
7.001.43	Title IV-E Eligibility – Foster Care Placement of a Child Under a Subsidized Adoption	Repeal	___	Yes	<u>X</u>	No
7.001.44	Supplemental Security Income	Move to 7.601.82	___	Yes	<u>X</u>	No
7.001.45	Title IV-A Emergency Assistance	Move to 7.601.83	___	Yes	<u>X</u>	No
7.001.46	Without Regard to Income	Move to 7.601.84	___	Yes	<u>X</u>	No
7.001.5	Formal Assessment	Repeal	___	Yes	<u>X</u>	No
7.001.6	Case Contact Requirements	Revise and Move to 7.204	___	Yes	<u>X</u>	No

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<u>Section Numbers</u>	<u>Current Regulation</u>	<u>Proposed Change</u>	<u>Stakeholder Comment</u>			
7.001.7	Case Closure	Move to 7.205	—	Yes	<u>X</u>	No
7.002	Documentation in Case Records	Move to 601.7	—	Yes	<u>X</u>	No
7.002.1	Case Recording	Move to 7.601.7	—	Yes	<u>X</u>	No
7.002.11	Case Records	Repeal	—	Yes	<u>X</u>	No
7.003	Purchase of Services	Revision of Section Title and Move to 7.607	—	Yes	<u>X</u>	No
7.003.1	Definitions	Move to 7.607.1	—	Yes	<u>X</u>	No
7.003.2	Contracting Requirements	Move to 7.607.2	—	Yes	<u>X</u>	No
7.003.3	Purchase of Program Services	Move to 7.607.3	—	Yes	<u>X</u>	No
7.003.4	Administrative Services	Move to 7.607.4	—	Yes	<u>X</u>	No
7.102	Hotline Requirements	New Rule	—	Yes	<u>X</u>	No
7.103.11, 7.103.12, and 7.103.21	Jurisdiction	New Rule	—	Yes	<u>X</u>	No
7.107	Instruments, Tools and Interview Procedures	New Rule	—	Yes	<u>X</u>	No
7.107.23	Risk Analysis	New Rule	—	Yes	<u>X</u>	No
7.200	Overview of Child Welfare Services	Move to 7.000	—	Yes	<u>X</u>	No
7.200.1	Program Area 3 Eligibility Criteria	Move to 7.200.1, A	—	Yes	<u>X</u>	No
7.200.2	HIV Policy	Move 7.608	—	Yes	<u>X</u>	No
7.200.3	Child Welfare Grievance Resolution Process	Move to 7.606	—	Yes	<u>X</u>	No
7.200.4	Required Notice of Rights and Remedies	Revise and Move to 7.601.31 and 7.103.9	—	Yes	<u>X</u>	No
7.200.5	Mandatory Reporting of Child Abuse or Neglect	Move to 7.601.5	—	Yes	<u>X</u>	No
7.200.6	Referrals	Move to 7.101, 7.000.2, A	—	Yes	<u>X</u>	No
7.200.61	Documentation of Referrals	Revise and move to 7.101.1, 7.202.61, 7.103.6, and 7.103.9	—	Yes	<u>X</u>	No
7.201.1 and 7.201.2	Definition of Program Area 4	Move to 7.001, B	—	Yes	<u>X</u>	No
7.201.3	Initial Assessment	Move to 7.201.1	—	Yes	<u>X</u>	No

Title of Proposed Rule: Child Protection and Child Welfare Rule Rewrite, Realignment, and Modification to Special Economic Assistance (SEA)

Rule-making#: 14-3-4-1

Office/Division or Program: Rule Author: Judy Rodriguez  
Office of Children, Youth and Families/Division of Child Welfare

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<u>Section Numbers</u>	<u>Current Regulation</u>	<u>Proposed Change</u>	<u>Stakeholder Comment</u>			
7.202	Program Area 5 – Children in Need of Protection	Move to 7.001, C	—	Yes	<u>X</u>	No
7.202.1	(None)	Repeal	—	Yes	<u>X</u>	No
7.202.2	(None)	Repeal	—	Yes	<u>X</u>	No
7.202.3	Definitions – Abuse, Agency Response, Assessment, Colorado Safety Assessment Tool, Differential Response, Present Danger, RED Team, Safe, Threat of Moderate to Severe Harm, Unfounded	Move to 7.000.2, A	—	Yes	<u>X</u>	No
7.202.3	Definitions – De Novo, Domestic Partner, Egregious Incident of Abuse and/or Neglect, Expunge, Facility, Family Assessment Response (FAR), Finding, Founded, Framework, Good Cause, High Risk Assessment (HRA), Impending Danger, Inconclusive, Intrafamilial Abuse and/or Neglect, Institutional Abuse, Moderate to Severe Harm, Near Fatality, Preponderance of Evidence, Safety Plan, Spousal Equivalent, Traditional Response, Unsafe	Move to 7.000.2 and Revise to align with Children's Code	—	Yes	<u>X</u>	No
7.202.4, A	Procedures for Referrals of Abuse or Neglect	Revise and Move to 7.601.4, A and 7.000.2, A	—	Yes	<u>X</u>	No
7.202.4, B	Response protocols	Revise and Move to 7.601.4,B	—	Yes	<u>X</u>	No
7.202.4, C	Appropriate information to reporting party	Repeal	—	Yes	<u>X</u>	No
7.202.4, D	Information to mandatory reporters	Move to 7.103.8	—	Yes	<u>X</u>	No
7.202.4 D, 1–13	List of mandatory reporters	Repeal 1–13	—	Yes	<u>X</u>	No

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7.202.4, E	Referral information into automated system	Revise and move to 7.103.9	—	Yes	<u>X</u>	No
7.202.4, F	Gathering and documenting information	Revise and Move to 7.103.1	—	Yes	<u>X</u>	No
7.202.4, G	County shall assign referral	Revise and Move to 7.103.6 and to 7.000.2, A	—	Yes	<u>X</u>	No
7.202.4, H	Procedures for Referrals of Abuse and or Neglect	Revise and Move to 7.103.5	—	Yes	<u>X</u>	No
7.202.4, I	Procedures for Referrals of Abuse and or Neglect	Revise and Move to 7.103.1	—	Yes	<u>X</u>	No
7.202.4, J	Procedure for Referrals of Abuse and or Neglect	Revise and Move to 7.103.9	—	Yes	<u>X</u>	No
7.202.4, K	Procedures for Referrals of Abuse and or Neglect	Revise and Move to 7.103.61; add new clarifying rule language	—	Yes	<u>X</u>	No
7.202.41, A	Referral Response Process	Revise and Move to 7.103.61; add new clarifying rule language	—	Yes	<u>X</u>	No
7.202.41, B	Differential Response	Move to 7.103.61 and 7.000.2, A	—	Yes	<u>X</u>	No
7.202.41, C	Differential Response Application Process	Revise and Move to 7.103.7	—	Yes	<u>X</u>	No
7.202.41, E	Documentation	Revise and move to 7.103.9	—	Yes	<u>X</u>	No
7.202.5	Assessment Procedures	Revise and move to 7.104, A and 7.104.122; add new clarifying rule language	—	Yes	<u>X</u>	No
7.202.51	Written Procedures	Revise and Move to 7.601.2 and 7.103.8	—	Yes	<u>X</u>	No
7.202.52, A-Q	Assessment Requirements	Revise and move to 7.104.41, 7.104.11, 7.107.15, 7.104.13,B, 7.104.122, E,F,7.104.13, D, 7.104.1,B, 7.000.2, A; add new clarifying rule language	—	Yes	<u>X</u>	No
7.202.53	Safety Intervention Model	Revise and Move to 7.000.2, A , 7.104, C	—	Yes	<u>X</u>	No
7.202.531	Child Safety at Initial Contact	Revise and Move to 7.104, B, 7.104.13, H	—	Yes	<u>X</u>	No

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<u>Section Numbers</u>	<u>Current Regulation</u>	<u>Proposed Change</u>	<u>Stakeholder Comment</u>			
7.202.532	Parameters for Use of the Colorado Safety Assessment Instrument	Revise and Move to 7.107.11; New Rule regarding updated Colorado Safety Assessment Tool	—	Yes	<u>X</u>	No
7.202.532, B	Exception for completing Safety Assessment	Repeal	—	Yes	<u>X</u>	No
7.202.532, C	Documentation of Safety Assessment	Revise and Move to 7.107.17, A, B	—	Yes	<u>X</u>	No
7.202.533	The Colorado Safety Assessment Instrument	Revise and Move to 7.107.12, 7.107.13, A,B, 7.104.14, A-D, 7.107.15	—	Yes	<u>X</u>	No
7.202.534	Safety Planning and Documentation	Revise and Move to 7.107.16, A-B, 7.107.16, I	—	Yes	<u>X</u>	No
7.202.54	Colorado Family Risk Assessment	Revise, add new Rule, and Move to 7.107.17, B, 7.107.21, A, B, 7.107.22 A, 7.107.24, A	—	Yes	<u>X</u>	No
7.202.55	Institutional Abuse or Neglect Investigations	Revise and move to 7.000.2, A, 7.104.21, 7.104.21,7.104.22, A, 7.104.23, 7.104.24, A, 7.013.2, 7.104.22	—	Yes	<u>X</u>	No
7.202.56	Third Party abuse or Neglect	Move to 7.104.31, A-C	—	Yes	<u>X</u>	No
7.202.57	Conclusion of Investigation	Revise and Move to 7.104.12, 7.104.121, A, B, 7.104.13, A, 7.104.14, B	—	Yes	<u>X</u>	No
7.202.6	Requirements Concerning County Entry of Founded Findings	Revise and Move to 7.104.122, A, B, 7.108, A-D, 7.108.1, 7.108.2	—	Yes	<u>X</u>	No
7.202.601	Definitions – Minor Neglect, Minor Physical Abuse, Moderate Neglect, Moderate Physical Abuse, Severity Level, Severe Physical Abuse	Revise and move to 7.000.2	—	Yes	<u>X</u>	No



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<u>Section Numbers</u>	<u>Current Regulation</u>	<u>Proposed Change</u>	<u>Stakeholder Comment</u>			
7.202.601	Definitions - Authorized Caregiver, Child in Need of Services, Environment injurious to the welfare of a child, Fatal Neglect, Fatal Physical Abuse, Severe Neglect	Move to 7.000.2	—	Yes	<u>X</u>	No
7.202.602	Entering Founded Findings Reports of Child Abuse or Neglect	Revise and Move to 7.104.131, B	—	Yes	<u>X</u>	No
7.202.603	Notice to Law Enforcement and District Attorney	Move to 7.104.14, C	—	Yes	<u>X</u>	No
7.202.604	Notice to the Person Found to be Responsible for Abuse or Neglect	Move to 7.104.14, C	—	Yes	<u>X</u>	No
7.202.605	State Level Appeal Process	Move to 7.109	—	Yes	<u>X</u>	No
7.202.606	State Fair Hearing Before the office of administrative Courts	Move to 7.110	—	Yes	<u>X</u>	No
7.202.607	Transition to the New Appeal process	Move to 7.111	—	Yes	<u>X</u>	No
7.202.608	State Department Office of Appeals Functions	Move to 7.112	—	Yes	<u>X</u>	No
7.202.609	Confidentiality of Appeal Records	Move to 7.113	—	Yes	<u>X</u>	No
7.202.61	Child Protection Teams	Move to 7.601.6	—	Yes	<u>X</u>	No
7.202.62	Provision of Ongoing Child Protection Services	Move to 7.202.1	—	Yes	<u>X</u>	No
7.202.7	Special Categories of Investigations	Revise Header and Move to 7.106	—	Yes	<u>X</u>	No
7.207.71	Definitions	Revise and Move to 7.000.2, B, and 7.000.2, A and 7.106.2, A	—	Yes	<u>X</u>	No
7.202.72, A	County Procedures for Assessment of Referrals of Medical Neglect of Infants with Disabilities	Revise and Move to 7.106.21	—	Yes	<u>X</u>	No
7.202.72, B, D-F, H	County responsibilities	Revise and Move to 7.106.22	—	Yes	<u>X</u>	No

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<u>Section Numbers</u>	<u>Current Regulation</u>	<u>Proposed Change</u>	<u>Stakeholder Comment</u>			
7.202.72, C, G	County responsibilities	Revise and Move to 7.106.23	—	Yes	<u>X</u>	No
7.202.73	Ongoing Services for Cases of Medical Neglect	Move to 7.202.2				
7.202.74, A	Assessment of Medical Neglect in Which Religious Considerations are Involved	Revise and Move to 7.106.3	—	Yes	<u>X</u>	No
7.202.74, B-D, F	Medical evaluations	Revise and Move to 7.106.31, A	—	Yes	<u>X</u>	No
7.202.74,E	Spiritual Healing	Revise and Move to 7.106.32	—	Yes	<u>X</u>	No
7.202.74,G	Parental interference	Revise and Move to 7.106.33	—	Yes	<u>X</u>	No
7.202.75	Assessment, Reporting and Review of an Incident of Egregious Abuse or Neglect Against A Child, a Child Near Fatality or a Child Fatality	Revise and Move to 7.106.11, A	—	Yes	<u>X</u>	No
7.202.76	Assessment Procedures	Revise and Move to 7.106.11, B	—	Yes	<u>X</u>	No
7.202.77	Reporting to the State	Revise and Move to 7.106.13	—	Yes	<u>X</u>	No
7.202.78	Additional Actions When County Department has had Prior/Current Child Welfare Involvement	Revise and Move to 7.106.121	—	Yes	<u>X</u>	No
7.202.8	State Review of an Incident of Egregious Abuse or Neglect Against a Child, Near Fatality or Child Fatality	Revise and Move to 7.106.14	—	Yes	<u>X</u>	No
7.203, 7.203.1	Program Area 6	Revise and move to 7.001, D	—	Yes	<u>X</u>	No
7.203.2	Child with Adoption assistance	Move to 7.203.1	—	Yes	<u>X</u>	No

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<u>Section Numbers</u>	<u>Current Regulation</u>	<u>Proposed Change</u>	<u>Stakeholder Comment</u>			
7.203.3	Child with Medical only Services	Move to 7.203.2	—	Yes	<u>X</u>	No
7.203.4	Children whose disposition is no longer reunification	Move to 7.203.3	—	Yes	<u>X</u>	No
7.203.5	Young Adults who have emancipated	Move to 7.203.4	—	Yes	<u>X</u>	No
7.303.1	Special Economic Assistance	Revise Rule	—	Yes	<u>X</u>	No
7.304.21, A	Definition of Kin	Move to 7.000.2, A	—	Yes	<u>X</u>	No
7.500.1 and 7.500.11	Program for Resource Development (Program Area 7)	Revise and move to 7.001, E	—	Yes	<u>X</u>	No
7.602	Staff Qualifications and Volunteers	New Section Title	—	Yes	<u>X</u>	No
7.602.1, 3, 4	Placeholder for hotline staff qualifications	New Rule	—	Yes	<u>X</u>	No
7.603	Child Welfare Training Academy Requirements – Placeholder	New Section Title	—	Yes	<u>X</u>	No
7.605.3	Use of Confidential Information-Release not required	New Section Title	—	Yes	<u>X</u>	No
7.605.32	Assessments of known or suspected incidents of child abuse and neglect	New Rule	—	Yes	<u>X</u>	No

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### **STAKEHOLDER COMMENT SUMMARY**

#### **DEVELOPMENT**

The following individuals and/or entities were included in the development of these proposed rules (such as other Program Areas, Legislative Liaison, and Sub-PAC):

CDHS invited community stakeholders to participate in meetings that were held at CDHS for county input on January 22, 2014, January 30, 2014, February 7, 2014, February 24, 2014, March 3, 2014, March 17, 2014, March 27, 2014, April 1, 2014, April 10, 2014 April 14, 2014, April 24, 2014, April 30, 2014 and May 5, 2014.

The following groups were consulted and their recommendations were included in the rule re-write process: Colorado Department of Human Services (CDHS) Policy Advisory Committee (PAC), the Division of Child Welfare PAC-Subcommittee members, CDHS Administrative Review Division, County Departments of Human/Social Services, Office of Information and Technology - Colorado Trails Automation, Child Protection Task Group, Office of the Child's Representative, Ombudsman's office, Rocky Mountain Children's Law Center, Child Welfare Executive Leadership Council, Child Welfare Training Academy

#### **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 following individuals and entities were informed of the rule re-write process: Child Protection Task Group (CPTG), Child Fatality Review Team (CFRT), Office of the Colorado's Child Protection Ombudsman's office, a program of the National Association of Counsel for Children, Colorado Department of Human Services including Administrative Review Division and the Child Welfare Division, and local county stakeholders.

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 ☒ No

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**STAKEHOLDER COMMENT SUMMARY** (continued)

Have these rules been reviewed by the appropriate Sub-PAC Committee?

☒ Yes ☐ No

Date presented numerous times in the past 12 months. Were there any issues raised? No

All new rules were approved by Child Welfare Sub-PAC during various meetings over the past year. Counties participated during weekly meetings over the past three months to discuss the rule revisions and repeals.

If not, why.

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 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.*

These were incorporated through the rule rewrite process over the past four months. Four additional webinars were held in May and June to collect additional feedback.

(12 CCR 2509-1)

## **7.000 OVERVIEW OF CHILD WELFARE SERVICES - PROGRAM AREAS AND TARGET GROUPS FOR 3, 4, 5, 6 AND 7**

Child Welfare Services constitutes a specialized set of services defined at Section 26-5-103, C.R.S., that are intended to strengthen the ability of families to protect and care for their own children, prevent involvement or continued involvement in the child welfare system, minimize harm to children and youth, and ensure permanency planning. The goal shall be to support the intactness of families, when appropriate, through the provision of services aimed at stabilizing the family situation and strengthening the parents/guardians in fulfilling their parental responsibilities to their children. Intervention shall be guided by respect for the family's integrity, knowledge of the legal base for action, and sound social work practice.

The following principles shall underlie the provision of Child Welfare Services:

- A. Children and youth shall have the right to be raised in an environment free from abuse or neglect preferably by their families of origin by providing reasonable efforts to maintain the family unit through the provision of in-home services.
- B. Placement shall be considered when there is evidence that leaving the child in the home would jeopardize the safety of the child or community. Reasonable efforts shall be made to prevent placement or to reunite the family as soon as safely possible if removal is necessary. In determining reasonable efforts to be made, and in making such reasonable efforts, the child's health and safety shall be the paramount concern. A court may determine that reasonable efforts shall not be required; otherwise, reasonable efforts shall be made to preserve and reunify families.
- C. Appropriate and culturally competent services that promote safety shall be provided to families, children, and youth in their own homes and in out-of-home placements.
- D. Children and youth who have been removed from the care of their parents shall have the right to a diligent search according to Section 7.304.52 (12 CCR 2509-4) for extended family members who can be considered as placement resources, to be placed in a safe environment, to not be moved indiscriminately from one placement to another, and to have the assurance of a permanency plan.
- E. Consideration of the child's age, culture, language, religion, and other needs shall guide the choice of all services provided. Race, color, and national origin of the child and the prospective parents are considered in foster and adoptive placements only in extraordinary circumstances.
- F. Case planning shall involve the parents so that relevant services can be provided to permit timely rehabilitation and reunification.
- G. Child Welfare Services shall be provided in collaboration with other community agencies on behalf of children, youth, and their families. Assessment tools or resources available through these community agencies shall be incorporated in the assessment, based on the culture and other needs of the family.

### **7.000.1 DESCRIPTION**

~~There are basic information, legal mandates, and policies generic to the administration and/or provision of services that cut across all program and service areas. These include general administrative responsibilities, protection of clients' rights, responsibilities of clients, case processing and documentation, and reporting requirements. The county departments shall provide services to persons who are eligible and belong to the particular Program Area target groups within the following rules of the Colorado Department of Human Services, subject to available appropriations.~~

### **7.000.2 FEDERAL GOALS**

Social services made available by county departments shall be directed toward the following federal goals (Title 45, CFR, Subtitle C, Section 2351):

- ~~A. achieving or maintaining economic self-support to prevent, reduce, or eliminate dependency;~~
- ~~B. achieving or maintaining self-sufficiency, including reduction or prevention of dependency;~~
- ~~C. preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests, or preserving, rehabilitating, or reuniting families;~~
- ~~D. preventing or reducing inappropriate institutional care by providing for community based care, home based care, or other forms of less intensive care, and;~~
- ~~E. securing referral or admission for institutional care when other forms of care are not appropriate, or providing services to individuals in institutions.~~
- ~~F. Minimizing the number of children in out-of-home placement for 24 or more months. The yearly goal shall be communicated by Agency Letter. The goal will be achieved through permanency efforts required in Section 7.300.~~

### **7.000.3 PROGRAM AREAS (PA) [Rev. eff. 1/1/14]**

Services are available from county departments in the following Program Areas:

- ~~A. Program for Prevention and Intervention Services to Children, Youth and Families at Risk of Involvement with Child Welfare (PA3)~~
- ~~B. Program for Youth in Conflict (PA 4)~~
- ~~C. Program for Children in Need of Protection (PA 5)~~
- ~~D. Program for Children and Families in Need of Specialized Services (PA 6)~~
- ~~E. Program for Resource Development (PA 7)~~

### **7.000.4 TARGET GROUPS**

Target groups for the above program areas are included in each area.

### **7.000.5 DEFINITIONS OF TERMS [Rev. eff. 4/1/12]**

The following are definitions of commonly used terms used in this manual:

~~“Applicant” means a person who has, directly or through someone authorized to act responsibly for him/her, requested social services. Such a person continues as an “applicant” so long as such application remains pending.~~

~~“Application” means an action by a person or an authorized representative who indicates verbally or in writing to the county department a desire to receive social services.~~

~~“Child” means any person under eighteen (18) years of age.~~

~~“Child Welfare Child Care” means child care assistance used to maintain children in their own homes or in the least restrictive out of home care when there are no other child care options available. This care is less than twenty-four (24) hours daily. See Section 7.302, “Child Welfare Child Care” (12 CCR 2509-4).~~

~~“Child Welfare Services” means service and payments for services (other than medical services covered by the “Colorado Medical Assistance Act” ) available, directly or indirectly, through the social services staff of the state and county departments for the benefit of eligible persons which services are provided pursuant to rules and regulations adopted by the State Department. Child welfare services are defined in Section 26-5-101(3), C.R.S.~~

~~“Client” shall mean any applicant or recipient applying for or receiving social services from a county department.~~

~~“Concurrent Planning” means the simultaneous preparation of plans to: 1) assist the child's parents in completing a treatment plan that, when completed by the parents, will allow the child to safely return to the parents' home; and, 2) place the child in a setting that will become the child's permanent home if the parents are unable to successfully complete their treatment plan.~~

~~“County Department” means a county department of social services or, if applicable, the county agency responsible for providing child welfare services as defined by Section 26-5-101(3), C.R.S.~~

~~“Day Care” or “Child Care Service” means care of a child under the age of thirteen (13) years (older children who need protection or have a special need may be approved by the county department) for a portion of a day, but less than 24 hours, in his own home by a person other than the parent or relative parent substitute, in a relative home, an exempt day care home, in a licensed or certified day care home, or licensed group day care facility.~~

~~“Delinquent Child” means a child ten years of age or older who has violated any federal or state law, except non-felony state traffic and game and fish laws or regulations; any municipal ordinance except traffic ordinances, the penalty for which may be a jail sentence; or any lawful order of the court made in accordance with the Children's Code (Section 19-1-103(9), C.R.S., as amended).~~

~~“Emancipation”, for purposes of the Colorado Children's Code and the delivery of social services, emancipation is considered to occur when a youth reaches age 18 and is no longer under the jurisdiction of the court or is married or enters military service.~~

~~“Emancipation Transition Plan” is a personalized youth-driven written document, that support emancipation and is intended to prevent the youth from becoming homeless.~~

~~“Fair Hearing” means any procedure by which an Administrative Law Judge, upon the request of an applicant or recipient, reviews facts in relation to an adverse action taken by a county department pursuant to Section 3.850 of the Department of Human Services' Income Maintenance staff manual (9 CCR 2503-1).~~

~~“Family” means one or more adults and children, if any, related by blood, or law and residing in the same household. Where adults, other than spouses, reside together, each is to be considered a separate family. Emancipated minors and children living under the care of individuals not legally responsible for that care are also to be considered separate families. A stepparent residing in the same household, who is not legally responsible for a child, is not considered a member of the family for purposes of determining monthly gross income in establishing a foster care fee. Stepchildren residing in the same household, for whom the custodial parent(s) are not legally responsible, are not considered part of the family in establishing a foster care fee.~~

~~“Independent Living Arrangement (I.L.A.)” means a placement in foster care where a youth lives independently in the community under the supervision of the county department. Receiving funds is not a necessary condition for a youth to be in an I.L.A. Youth shall receive casework services on I.L.A. with or without receipt of the I.L.A. stipend.~~

~~“Independent Living Assessment” means an evaluation of the youth's daily living skills. This assessment will document the youth's strengths and needs, as well as capacity and motivation to learn the appropriate skills.~~

~~“Independent Living Plan (I.L.P.)” means part of the Family Services Plan that includes those services designed to promote or enhance a youth's capacity to make a successful transition from out-of-home care to living independently and maintaining self-sufficiency.~~

~~“Intake” means that process in the county department in which an applicant makes known his need for service, the dimension of the need is explored, and a decision is made as to whether the agency can help.~~

~~“Neglected or Dependent Child” is defined in the Children's Code (Section 19-1-103, C.R.S.).~~

~~“Provided Services” means those services delivered by county department of social services staff.~~

~~“Provider” means a vendor of goods and/or services under the social services program.~~



~~"Purchased Services" means those services made available to recipients through either another public agency, a private agency, or a private individual under contract with the state or county department.~~

~~"Reasonable Efforts" is defined in the Children's Code (Section 19-1-103, C.R.S.).~~

~~"Recipient" means any individual or family who is receiving or has received benefits from the programs of public assistance administered or supervised by the state department pursuant to the provisions of Title 26, C.R.S. Recipient also means an individual with whom, or for whom, a specific goal is established and to whom services are provided or purchased for the sole purpose of achieving this goal. Services are considered to be provided to the recipient when they are provided to, or on behalf of, other members of the recipient's family to facilitate achievement of the recipient's goal.~~

~~"Safety" means the absence of conditions that are likely to result in harm to the child.~~

~~"Siblings" means a sibling from birth who is descended from one or two mutual parents, stepbrother, former stepbrother, stepsister, or a former stepsister as defined in Section 19-1-128(5), C.R.S. for the purpose of sibling visitation.~~

~~"State Department" means the Colorado Department of Human Services.~~

~~"Supplemental Security Income (SSI)" means monthly cash payments made by the Social Security Administration to an aged, blind, or disabled individual who meets the requirements under Title XVI of the Social Security Act.~~

~~"Supportive Activities" means those activities of the informational, statistical, clerical personnel, and staff training systems which support the social services program.~~

#### **7.000.6 COUNTY RESPONSIBILITIES [Rev. eff. 8/1/12]**

~~A. County departments of social services shall administer social services programs in compliance with State Department fiscal and program regulations.~~

~~B. County departments shall use forms, and report on the Department's automated reporting system as specified, when required by the State Department (Section 26-1-111(2)(e), C.R.S.).~~

~~C. County departments shall take reasonable efforts to advise county residents of services available to target groups through the department by means of such methods as press releases, presentations, pamphlets, and other mass media.~~

~~D. When a social services recipient leaves the original county of residence that county department shall close its case file with exceptions found in individual Program Areas (e.g., Program Area 5). Recipients are to be advised on the state prescribed notice of social service action form.~~

~~E. Requests for services from agencies, including other county departments or states, shall be responded to with the same level of attention and to the same extent as requests received from within the county, and as specified in each of the Program Areas.~~

~~F. The county departments shall report to the State Department at such times and in such manner and form as the State Department requires, including through the Department's automated reporting system.~~

~~G. Social service staff shall make a personal, telephone, or written contact within five (5) working days of an application or other request for services or as otherwise specified for target groups within Program Areas.~~

~~H. The county department shall refer, within ten (10) working days, to the appropriate investigatory agency and the district attorney any alleged discrepancy which may be a fraudulent act or suspected fraudulent act by a recipient or provider of services.~~

~~The county department shall seek recovery for the total amount of services costs if the county departments finds the individual was not eligible for the service or if fraud is established.~~

- I. ~~County departments shall take whatever action is necessary to recover payments when recipients and/or providers owe money to the Department because of overpayments, ineligibility and/or failure to comply with applicable state laws, rules or procedures.~~
- J. ~~Social service staff shall advise applicants/clients in writing and orally of the client's responsibility to report within thirty (30) calendar days, changes of circumstances affecting their eligibility and provide them with a state-prescribed change of circumstance form.~~
- K. ~~County department staff shall advise clients of their responsibility to cooperate and participate with the county department in planning for services needed and requested, and engaging in appropriate activities to resolve problems or concerns of common interest and that failure of clients to participate or cooperate may result in modification or termination of services.~~
- L. ~~County departments shall use volunteers to the extent feasible and practical in the administration and delivery of social services to enhance agency programs.~~
- M. ~~The county department shall ensure that all personnel who supervise or provide professional services in child welfare services possess the following minimum qualifications:~~

1. ~~Professional Entry (Training) Level Position~~

~~A Bachelor's degree with a major in a human behavioral sciences field.~~

2. ~~Professional Journey Level Position~~

~~This position has obtained the skills, knowledge, and abilities to perform duties at the full independent working level through experience and education.~~

- a. ~~A Bachelor's degree with a major in a human behavioral science field and one year of professional caseworker experience acquired after the degree in a public or private social services agency; or,~~
- b. ~~A Bachelor's of Social Work degree with a major in public child welfare and successful completion of an approved field placement in a county department of social/human services; or,~~
- c. ~~A Master's degree in social work or human behavioral sciences field.~~

3. ~~Life Skills Staff Position~~

~~This position has obtained a high school diploma or a General Equivalency Diploma (GED) and six months full time public contact in human services or a related field. Substitution for public contact is successful completion of a certificate program and/or college course equivalent to public contact in human services or a related field.~~

4. ~~Casework Supervisor Position~~

- a. ~~A Bachelor's degree with a major in a human behavioral sciences field (no substitution) and three years professional casework experience at the journey level obtained after the degree; or,~~
- b. ~~A Master's degree or higher in social work or human behavioral sciences field and two years professional casework experience at the journey level obtained before or after the advanced degree.~~

5. ~~Education Requirements~~

~~In order to meet the minimum educational requirements of a human behavioral science degree, the applicant must have a degree with major course work (equivalent to 30 semester hours or 45-~~

quarter hours) in either development of human behavior, child development, family intervention techniques, diagnostic measures or therapeutic techniques such as social work, psychology, sociology, guidance and counseling, and child development.

#### 6. Waiver Process

If proven recruitment difficulty exists, county departments may request a waiver of these requirements by submitting a request to the State Department of Human Services, Division of Child Welfare Services. Justification shall include:

N. The county shall ensure supervision of casework and case management staff through:

1. Review of individual and family assessments;
2. Family Service Plans;
3. Records maintenance and documentation, including updated information in the Department's automated reporting system; and,
4. Plans for termination of services.

These review findings shall be documented in writing by supervisory personnel and provided to the social service staff and state staff upon request.

O. All current and prospective employees of the county department, who in their position have direct contact with any child in the process of being placed or who has been placed in out of home care, shall submit a complete set of fingerprints to the Colorado Bureau of Investigation (CBI) that were taken by a qualified law enforcement agency to obtain any criminal record held by the CBI.

1. The person's employment is conditional upon a satisfactory criminal background check; and subject to the same grounds for denial or dismissal as outlined in 26-6-104(7), C.R.S., including:
  - a. Checking records and reports; and
  - b. Individuals who have not resided in the state for two years shall be required to have a Federal Bureau of Investigation (FBI) fingerprint-based criminal history.
2. Payment of the fee for the criminal record check is the responsibility of the individual being checked.
3. Prospective employees who are transferring from one county department to another are not required to be re-fingerprinted if they complete the following process:
  - a. New employees must obtain their CBI clearance letter or a photocopy of their processed fingerprint card from their former employer. They must attach it to a new fingerprint card, with the top portion completed.
  - b. The new fingerprint card must include the new employer's address. "Transfer County Department" must be inserted in the "Reason Fingerprinted" block.
  - c. The CBI clearance letter (or photocopy of the old fingerprint card) and the new fingerprint card must be sent with money order payable to the CBI.
  - d. County departments that have accounts with CBI are not required to send the money order, and they shall enter their CBI account number in the OCA block of the new fingerprint card.

#### 7.000.7 CLIENT RIGHTS

##### 7.000.71 Anti-Discrimination [Rev. eff. 12/1/11]

Social services programs shall be administered in compliance with Title II of the Americans with Disabilities Act of 1990, Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and the requirements of Section 504 of the Rehabilitation Act of 1973. No later editions or amendments are included. Copies may be obtained or examined by contacting the Director, Division of Child Welfare Services, at the Colorado Department of Human Services, 1575 Sherman Street, Denver, Colorado 80203; or any state publications depository library.

- A. ~~County department staff shall not deny a person aid, services, or other benefits or opportunity to participate therein, solely because of age, race, color, religion, creed, sex, national origin, political beliefs, method of payment, or disability.~~
- B. ~~County departments shall make services available to all eligible clients including disabled individuals through hiring qualified staff or through purchase of necessary services.~~
- C. ~~County departments must be accessible to all applicants and recipients who wish to receive services, or the services must be made accessible at an alternate location, as set forth in the county written plan.~~
- D. ~~County departments shall have an affirmative action plan and a disability services plan.~~
- E. ~~County departments shall take reasonable and prudent steps to ensure that persons with limited English proficiency have meaningful and equal access to programs, services and information free of charge.~~
- F. ~~County departments shall take extra care to ensure that the choice of interpreter by a person with limited English proficiency is voluntary and made with the knowledge that a competent interpreter could be provided by the county department at no cost to the person with limited English proficiency upon request.~~
- G. ~~County departments shall post signs in reception areas, intake areas or other entry points in the department notifying persons with a physical or mental disability that auxiliary aids and services, including sign language, are available upon request.~~

#### **7.000.72 Confidentiality**

- A. ~~County departments shall treat all information as confidential according to applicable statutes, including, but not limited to, the following:~~
  - 1. ~~Names and addresses of applicants, current or past recipients, and services provided.~~
  - 2. ~~Information related to the social and economic conditions or circumstances concerning any individual including wage or income information or correspondence obtained from any source including state or federal agencies.~~
  - 3. ~~Agency evaluation of information about any individual.~~
  - 4. ~~Medical, psychological, or social evaluation including diagnosis or past history of disease, or disability of any kind.~~
- B. ~~County departments shall apply these rules to requests for information from such groups or individuals as legislators, governmental authority, the courts, or law enforcement officials, as from any other source. Whenever there is a question about the legality of releasing information to persons seeking information from the county department, the requestor shall be advised to request the court to require the county department to produce the desired records or information within the custody or control of the county department.~~
- C. ~~The county department shall obtain written permission from the individual or family for the release of information, unless such release is otherwise authorized by law or unless the referring agency has already done so.~~
- D. ~~In a criminal or civil proceeding in which the county case record is subpoenaed or any county representative is ordered to testify concerning a current or former applicant or recipient, the court shall be advised through proper channels of the statutory provisions, policies, or rules and regulations concerning disclosure of~~

information. Confidential information shall not be released in a judicial proceeding unless so ordered by the court.

E. ~~All confidential information about social services shall be sorted and processed so that there are safeguards to insure that no unauthorized personnel can acquire or retrieve the information.~~

F. ~~Confidentiality of the reporting party in an abuse or neglect referral shall be protected.~~

G. ~~Confidential information, such as the identity of the reporting party, shall not be released in a judicial proceeding unless so ordered by the court.~~

H. ~~The release or use of information concerning individuals applying for or receiving social services, or who received services, shall be restricted to persons or agency representatives who are subject to standards of confidentiality that are comparable to those of the state and county departments.~~

I. ~~The county department shall define in writing and submit to the state a process by which clients may obtain access to their case records. The following elements shall be included in the written client access to records process:~~

1. ~~Designated source (individual and position) within the department who will handle client requests for records access.~~

2. ~~Directions for maintaining a record of the requests.~~

3. ~~Time frames for responding to requests.~~

4. ~~Directions for individuals requesting access to records.~~

5. ~~How editing is to occur and by whom (removal of reporting party information; removal of other confidential information which is protected by law).~~

6. ~~Charges involved for the requestor.~~

7. ~~Warning regarding the sharing of confidential information by the requestor.~~

J. ~~The county department shall share appropriate information with other child welfare agencies and community professionals who care for, treat, or supervise a child to ensure coordination of services and protection of the child. The county department shall require that these agencies and persons have confidentiality standards.~~

K. ~~Individuals participating in a foster care/alternative service review of a child at the invitation of the county department shall be considered as part of the administration of the social services program for purposes of handling confidential information. The role of such persons is to contribute information essential to the delivery of services to the child and the child's family. Information concerning the child and the child's family shall be considered confidential by all parties to the review system.~~

L. ~~County departments shall perform inquiries into the State Department's automated system for information pertaining to their own internal county department of human services operations, including, but not limited to:~~

1. ~~Investigations of allegation of child abuse or neglect;~~

2. ~~Certifying individuals as county kinship providers, county foster and/or adoptive home;~~

3. ~~Screening of county department employees and volunteers if such persons' responsibilities include direct contact with children.~~

M. ~~The county that entered the confirmed report shall process all inquiries submitted by the following types of entities or individuals:~~

1. ~~Departments of social or human services, Court-Appointed Special Advocate Program (CASA), the courts or individuals authorized to review records and reports of child abuse or neglect;~~
2. ~~Individuals or child placement agencies approved to conduct home studies for adoptive parents;~~
3. ~~Governing bodies and citizen review panels for purposes of carrying out their conflict resolution duties;~~
4. ~~Inquiries from individuals who have been involved with the county department wanting a copy of the information pertinent to himself or herself or as having the legal responsibility or authorization to care for, treat, or supervise a child who is the subject of a report or record. The exception to this is employment and volunteer related background check inquiries (see 7.000.72, Q and 7.701.31).~~

~~N. Any records or reports that are unconfirmed may only be used to assist in future risk or safety assessments.~~

~~O. For purposes of carrying out the conflict resolution duties as set forth in Section 19-3-211, C.R.S., county governing bodies and citizen review panels shall be given access to child abuse or neglect records or reports related to specific grievances under their purview. The county department shall ensure that members understand the confidential nature of such information.~~

~~P. After considering the above statements, the use or disclosure of information by the county department concerning current or prior applicants and recipients shall be prohibited except for purposes directly connected with the administration of public assistance and welfare and related state department activities which include:~~

~~1. Administration of county social services programs:~~

- ~~a. Establishing of eligibility~~
- ~~b. Determining amount and type of social services to be provided~~
- ~~c. Providing social services~~

~~2. Any investigation, prosecution, or criminal or civil proceeding in connection with the administration of the program.~~

~~Q. Provisions for employment and volunteer related background check inquiries will be followed as outlined in Section 7.701.32 "Use of Reports and Records of Child Abuse or Neglect for Background and Employment Inquiries".~~

~~R. Any person who willfully permits or who encourages the release of data or information related to child abuse or neglect contained in the State Department's automated database to persons not permitted access to such information, commits a Class 1 misdemeanor and shall be punished as provided in Section 18-1.3-501, C.R.S.~~

#### **~~7.000.73 Fees -- Records and Reports [Eff. 11/1/07]~~**

~~A. The county department may assess a fee for the reproduction of county documents. Such fees may be waived in accordance with county policy.—~~

~~B. The State Department shall assess a uniform fee for the purpose of conducting employment, volunteer, placement and adoption background screening to determine if the individual has been confirmed in the State Department's automated system as a person responsible in a child abuse or neglect incident. The fee shall be established by the State Department not to exceed the direct and indirect costs of administering Section 19-1-307(2)(i), (k) to (o), and (t), C.R.S., and Section 19-3-313.5(3) and (4), C.R.S.—~~

~~C. The State Department shall review the fee at least annually to determine whether the fee is consistent with funding the direct and indirect costs indicated above.—~~

- ~~D. The State Department is authorized to set the fee not to exceed \$35, taking into consideration the appropriation level set by the General Assembly and the fund balance of, and the funds collected and paid into, the Records and Reports Cash Fund.—~~
- ~~E. The State Department shall not set the fee above \$35, unless specifically approved by the State Board of Human Services. The State Department shall notify the State Board of Human Services of changes to the fee at least annually upon the assessment of the fee.—~~
- ~~F. When the State Department anticipates changing the fee under the parameters set forth above, the State Department shall notify interested persons, at least thirty (30) calendar days in advance, if practicable, to obtain public comment to consider prior to the change.—~~
- ~~G. The State Department shall notify interested persons by way of the Department's Background Investigations Unit website and through information provided by the Background Investigations Unit when responding to background screen requests.—~~

#### **7.000.74 Local Dispute Resolution Process**

- ~~A. County department staff shall advise clients orally and in writing at the time of application of their right to appeal a county department decision either to the state department for a fair hearing and/or to the county department for a local level dispute resolution conference.~~
- ~~B. Applicants or recipients shall be advised in writing by use of a prescribed state form and provided an opportunity for a county level dispute resolution conference within 10 calendar days of the mailing date of notice of a decision by the county department of the denial, decrease, discontinuation, or modification of social services, and/or Medicaid for children in foster care. Refer to the Income Maintenance Staff Manual, Section 3.840 (9 CCR 2503-1), for the proper policy and procedures for noticing and conduct of the local conference.~~

#### **7.000.75 State Appeal [Rev. eff. 4/1/13]**

~~Applicants or recipients shall be advised by the county department in writing of their right to appeal from adverse decisions of county departments of human services. When issuing a written adverse decision, the county departments shall include complete information on appeal rights, including any right to a local conference with the county department.~~

~~The rules governing the appeals process, including timeframes and notice, are set forth in rule Section 3.850 (9-CCR 2503-8). Appeals of confirmed child abuse and neglect shall proceed in accordance with Sections 7.202.604 through 7.202.609 (12 CCR 2509-3).~~

#### **7.001 PREVENTION AND INTERVENTION DEFINITIONS [Eff. 1/1/14]**

~~Prevention and intervention services are intended to support families to safely care for their children and/or youth, and to prevent entry or re-entry into the child welfare system.~~

- ~~A. Prevention services are voluntary and based on a human services professional decision regarding the family's need and on youth and family choice. Services may include:~~

- ~~1. Services that reduce risk and increase protective factors to decrease the likelihood of child abuse and neglect; or,~~
- ~~2. Services provided when a child or youth is in conflict with his/her family members, community, or at risk for abuse or neglect and do not meet the definition of unsafe as found in section 7.202.3.~~

~~Services cannot be provided when the child's circumstance meets the definition of unsafe as found in section 7.202.3.~~

- ~~B. Intervention services are voluntary and based on a human services professional decision regarding the family's need and youth and family choice. Services may include:~~

- ~~1. Proactive efforts to intervene when the immediate health, safety or well-being of a child is not at risk; or,~~
- ~~2. Services provided after a referral has been screened out; or,~~
- ~~3. Services provided when a case is assessed as not requiring child protection or youth in conflict services and the case is closed; or,~~
- ~~4. Services provided when a child welfare case has been closed, the child is safe as defined in section 7.202.3, and additional supports would improve a family's protective factors and reduce the possibility of recurrence of abuse or neglect.~~

#### **~~7.001.1 REFERRAL [Rev. eff. 1/1/14]~~**

- ~~A. The county department shall provide a referral and intake process wherein all persons have the opportunity to apply for services. In the referral and intake process, the assigned social service staff shall accept applications and screen referrals.~~
- ~~B. A referral report shall be completed in all appropriate situations, and at a minimum must include:~~
- ~~1. Demographic information~~
  - ~~2. Referring source~~
  - ~~3. Results of initial assessment~~
  - ~~4. Dispositional decision~~
- ~~C. The county department, if requested, shall provide the referring source with an explanation of the action taken as a result of the referral.~~

#### **~~7.001.11 Application [Rev. eff. 1/1/14]~~**

- ~~A. An application must be taken from all persons requesting services. Such application may be either oral or in writing, but in all instances shall be entered on the prescribed state application form with the date of application. The application shall be signed by the applicant prior to approving services or the reason the applicant was unable to sign shall be documented on the application form. County departments shall enter required information into the Department's automated reporting system.~~
- ~~B. Social service staff shall advise clients of services which are applicable to their needs with sufficient clarity to enable the client to apply for those services applicable to their situation.~~

#### **~~7.001.2 INITIAL FUNCTIONAL ASSESSMENT~~**

~~An initial assessment by the county department of social services staff shall include:~~

- ~~A. The appropriateness of referral.~~
- ~~B. Determining if the case is open in the agency.~~
- ~~C. Awareness of agency and community resources and their current availability.~~
- ~~D. Initial assessment of problem and service needs.~~
- ~~E. Determining if another agency can better serve the client.~~
- ~~F. Information about risk factors that can be used in making decisions about urgency of service delivery.~~
- ~~G. Determining whether an emergency exists that meets the emergency assistance criteria in accordance with Section 7.001.45.~~



### **7.001.3 ELIGIBILITY DETERMINATION**

- ~~A. Services staff shall determine an applicant's eligibility for services considering the applicable Program Area and the identified target group in each Program Area. Target group requirements are found in each Program Area.~~
- ~~B. The social service staff shall approve or deny an application within 30 calendar days of the application. The applicant shall receive written notification of the county decision within 15 calendar days after the decision is made. For cases in Program Areas 4, 5, and 6, if a client applies for services rather than receives court-ordered services, the Notice of Social Services Action shall be used to approve or deny services.~~
- ~~C. The county shall document eligibility on the county face sheet and the Department's automated reporting system.~~
- ~~D. Eligibility for services shall be redetermined when the case circumstances change by updating the Department's automated reporting system.~~

### **7.001.4 DETERMINATION AND DOCUMENTATION OF FUNDING SOURCE FOR THE PURPOSE OF REPORTING SERVICES AND TO GAIN MAXIMUM FEDERAL REIMBURSEMENT**

~~If a child is determined eligible for services, the county department shall document the child's funding source eligibility on the Department's automated reporting system. This activity shall occur for each child opened on the department's automated reporting system. Eligibility shall be documented for each funding source for which the child is eligible.~~

~~Eligibility criteria and required time frames for determination are found in subsections 7.001.41 through 7.001.46.~~

#### **7.001.41 Title IV-E Foster Care [Rev. eff. 11/1/11]**

~~Title IV-E of the Social Security Act provides federal matching funds to help pay for the cost of foster care for eligible children. It also pays for training and administrative costs associated with the delivery of services to Title IV-E eligible children.~~

#### **A. Eligibility Verification and Documentation**

- ~~1. Verification of the child's citizenship or alien status is required. Other information received by the county department to support a Title IV-E eligibility determination does not require verification unless it conflicts with other information in the possession of the department. If such a conflict occurs, the county department shall use verification procedures provided in the Income Maintenance staff manual section for the Colorado Works Program to resolve the conflict (9 CCR 2503-1).~~
- ~~2. The county department shall document each of the eligibility factors on the state prescribed form. The county must ensure that a copy of the signed voluntary placement agreement or court order and any required verifications are present in the case file.~~
- ~~3. The county department shall use the following eligibility effective dates in the Department's automated reporting system:
  - ~~a. The eligibility effective date of the child for Title IV-E shall be the first day of the month in which all eligibility criteria for the child are met, but can be no earlier than the first day of placement.~~
  - ~~b. The date of eligibility of the placement for reimbursements through Title IV-E is the first day of the month in which all the Title IV-E provider eligibility criteria are met.~~
  - ~~c. With respect to the court order/petition, the date that is used is the date of the court order or the date a petition is filed for custody of the child which eventually leads to a court-ordered removal of the child from the home.~~~~

~~B. Title IV-E Eligibility Criteria for a Child—Initial Determination~~

- ~~1. The child was removed from his/her parent(s) or other specified relative either by:~~
  - ~~a. A voluntary placement agreement entered into by the child's parent or legal guardian; or,~~
  - ~~b. Order of the court.~~
- ~~2. The first court ruling sanctioning the removal of the child from the home must contain findings to the effect that:~~
  - ~~a. Continuation in the home would be contrary to the welfare of the child; or,~~
  - ~~b. Out-of-home placement is in the best interests of the child.~~

~~If this "best interests" determination is not recorded in the first written court order, signed by a judge or magistrate, pertaining to the removal of the child from the home, a transcript of the findings and orders from the court proceeding is the only other documentation that can be accepted to verify that the required judicial determination was made. Neither affidavits nor subsequent "nunc pro tunc" orders are acceptable verification for meeting the "best interests" requirement.~~

- ~~3. There must be an order of the court within 60 calendar days after the date the child is placed in out-of-home care with a finding to the effect that:~~
  - ~~a. Reasonable efforts have been made to prevent the removal of the child from the home; or,~~
  - ~~b. An emergency situation exists such that the lack of preventative services was reasonable; or,~~
  - ~~c. Reasonable efforts to prevent the removal of the child from the home were not required. (See Section 7.304.53, B, 3, for circumstances in which the court may determine, that reasonable efforts to prevent removal are not required).~~

~~If a "reasonable efforts to prevent the removal" determination was made by the court as required, but was not recorded in the original written court order signed by the judge or magistrate pertaining to that judicial determination, a transcript of the findings and orders from the court proceeding is the only other documentation that can be accepted to verify that the required determination was made. Neither affidavits nor subsequent "nunc pro tunc" orders are acceptable verification for meeting this "reasonable efforts" requirement.~~

- ~~4. The county is granted legal custody of the child or the child is in out-of-home care under a voluntary placement agreement.~~
- ~~5. The child must have lived with a parent or other specified relative from whom the child is removed through a voluntary placement agreement or court-ordered custody with the county department in the month, or within the six months preceding the month, in which the voluntary placement agreement was signed or court proceedings were initiated to remove the child.~~
- ~~6. A child removed through a "constructive removal" shall be determined Title IV-E eligible if all other applicable criteria for Title IV-E eligibility are met.~~

~~A constructive removal occurs when all of the following apply:~~

- ~~a. The child resides with a non-parent caretaker who is not the legal custodian or guardian of the child; and,~~
- ~~b. The child is court ordered into the custody of the county department or placed through a voluntary placement agreement; and,~~

c. ~~The child remains in the home of the caretaker who serves as the out-of-home care provider to the child after the county is awarded custody or obtains the agreement for voluntary placement.~~

7. ~~To be eligible for Title IV-E, the child must be determined eligible for Aid to Families with Dependent Children (AFDC) in accordance with the July 16, 1996, regulations (and exceptions as allowed).~~

#### C. ~~Title IV-E Eligibility Criteria of a Provider~~

~~For the placement costs of a Title IV-E eligible child to be claimable through Title IV-E funding the provider must be a Title IV-E eligible provider. An out-of-home provider must be fully licensed or fully certified to be a Title IV-E eligible provider.~~

~~Placement costs of Title IV-E eligible children placed with provisionally licensed or provisionally certified out-of-home care providers will not be claimable through Title IV-E foster care as they are not fully licensed or fully certified providers.~~

~~Administrative costs for an otherwise Title IV-E eligible child who is placed in less than fully licensed or fully certified out-of-home care placements are not claimable through Title IV-E funding, except when the child is placed with a relative and the relative is pursuing full foster care certification. Administrative costs can be claimed for up to six months while the child remains in placement with a provisionally certified relative provider.~~

~~Administrative costs are not claimable through Title IV-E funding for children who are placed in facilities that are not Title IV-E eligible facilities, such as a detention placement, except for the calendar month in which a child moves from a facility that is not eligible for Title IV-E funding to a Title IV-E claimable out-of-home care facility.~~

#### D. ~~AFDC Eligibility Tests~~

~~Title IV-E requires that eligibility for Aid to Families with Dependent Children (AFDC) must be determined in accordance with the regulations as in effect on July 16, 1996, and exceptions as allowed. See AFDC rules from July 16, 1996. The AFDC eligibility month is the month court proceedings leading to the removal were initiated or the month in which a voluntary placement agreement was signed.~~

1. ~~Living with a Relative~~ – ~~The child must have lived with a parent or other specified relative:~~

a. ~~During the month in which court proceedings to remove the child were initiated or a voluntary placement agreement was signed; or,~~

b. ~~Sometime within the 6 months preceding the month in which court proceedings to remove the child were initiated or a voluntary placement agreement was signed.~~

2. ~~Deprivation of Parental Support~~ – ~~The child must be deprived of parental support or care of one or both parents by reason of:~~

a. ~~Death;~~

b. ~~Incapacity—physical or mental;~~

c. ~~Continued absence from the home; or,~~

d. ~~Unemployment—deprivation due to unemployment exists when:~~

1) ~~Both of the child's natural or adoptive parents resided in the removal home in the month the voluntary placement agreement was signed or court proceedings were initiated to remove the child from the home; and,~~

- 2) The household income, after AFDC income tests are applied, is less than the need standard for the household.

### 3. Determination of Need

The income and resources of the household members of the removal home must be within the allowable standards for an AFDC assistance unit. Refer to the AFDC rules from July 16, 1996, to determine which members of the household are considered in the determination of income and resources.

- a. Resources—The family must have less than \$10,000 in countable resources.
- b. Income Test—The household income after AFDC income tests are applied must be less than the need standard for the household.

### 4. Additional AFDC Eligibility Factors

- a. Age—The child must be under eighteen (18) years, or if over 18 but not yet 19 years of age, must be a fulltime student in a secondary school or in the equivalent level of vocational or technical training and expected to complete the program before age 19. Such children are eligible for Title IV-E though the month of completion of the educational program.
- b. Citizenship—The child must be a United States citizen, naturalized citizen, or qualified alien to be eligible of Title IV-E. Refer to Section 3.140 of the Income Maintenance manual (9 CCR 2503-1).
- c. Residency—The child must be a resident of Colorado. If the child's residency is from another state, that state is responsible for determining Title IV-E eligibility of the child.

### E. Eligibility Factor—Voluntary Placement Agreement

1. A voluntary placement agreement must be completed and signed by the parent(s) or legal guardian and the county department.
2. Eligibility for Title IV-E foster care can begin no earlier than the signature date of the voluntary placement agreement
3. Voluntary placement agreements are limited to 90 calendar days. If placement of the child is to continue beyond 90 calendar days, the county department must obtain a petition to review the need for placement that leads to a court order granting the county department legal custody.
4. There must be an order by the court within 180 calendar days of the child's placement in foster care that "continued placement is in the best interests of the child", or words to that effect. If such an order is not made by the court within the allowable 180 calendar days, the child is not eligible for Title IV-E foster care reimbursement for the remainder of the child's placement in out-of-home care.

### F. Eligibility Factor—Relinquishment

If a child is relinquished to the county department, the county shall petition the court to judicially remove the child even though the parent relinquished the child to the agency. Children relinquished to the county department can be Title IV-E eligible when:

1. The child had last been living with the parent within six months of the date court proceedings were initiated.
2. The court order contains the findings shown at Section 7.001.41, B.
3. The child meets other eligibility factors.

#### ~~G. Minor Parent and Child in Mutual Care~~

~~A child residing in mutual out-of-home care with his/her adult parent is not considered removed from the parent because the child continues to reside with the parent in the same residence; therefore, the child is not IV-E eligible.~~

~~When the parent is a minor and the minor parent has been determined eligible for Title IV-E foster care, the child's placement costs are reimbursable through Title IV-E foster funding as an extension of the minor parent's cost of care.~~

#### ~~H. Required Time Frames~~

- ~~1. The county department is responsible for determining the eligibility of every child entering out-of-home foster care within 45 calendar days of the placement date unless good faith efforts have been made and recorded in the child's record.~~
- ~~2. Counties shall redetermine eligibility using the state prescribed form every twelve (12) months from the date the child enters foster care.~~

#### ~~I. Referral to Child Support Enforcement~~

~~The county department shall refer every child determined eligible for Title IV-E foster care to the county department's Child Support Enforcement Unit for child support services, except when the:~~

- ~~1. Child is in continuous placement for less than 31 days.~~
- ~~2. Child's absent parent is unknown.~~
- ~~3. Best interests of the child would not be served, such as when parental rights have been terminated or the Family Services Plan documents that family contact is inappropriate.~~
- ~~4. Child's deprivation status under Title IV-E eligibility is "Unemployment".~~

#### ~~J. Redetermination of Title IV-E Eligibility Requirements~~

- ~~1. A court order must remain in effect which grants legal custody of the child to the county department or a petition to review the need for placement was filed and the court has ordered legal authority for continued placement within 180 calendar days of the date a child entered out-of-home care by voluntary placement agreement.~~
- ~~2. Effective March 27, 2001, there must be an order of the court finding that the county department has made reasonable efforts to finalize a permanency plan. This finding must be made within 12 months of the date the child enters foster care, and every 12 months thereafter while the child remains in out-of-home care. If 12 months elapse without this judicial determination, eligibility for Title IV-E foster care temporarily ends. Title IV-E eligibility can resume the 1st day of the month in which the finding is made.~~

#### ~~K. Redetermination of Provider Eligibility~~

~~An out-of-home care provider must be licensed or certified to be a Title IV-E eligible placement. Placement costs for a Title IV-E eligible child are only Title IV-E claimable when a child is placed with a Title IV-E eligible provider.~~

~~Effective September 1, 2000, provisionally licensed or provisionally certified out-of-home care providers will not be claimable placements through Title IV-E foster care as they are not fully licensed or fully certified.~~

#### ~~L. Reasonable Candidates~~

Reasonable candidates for foster care, for the purposes of Title IV-E program, are children determined to be at risk of imminent placement out of the home as defined in Section 19-1-103(64), C.R.S. Administrative costs may be claimed for children who are determined to be at imminent risk of removal from the home through a voluntary placement agreement or court-ordered custody with the county department. A determination must be made as to whether the child is at imminent risk of removal from the home no less frequently than every six months. Reasonable efforts shall be made to prevent the removal of the child from the home until such time that pursuing removal of the child from the home becomes necessary.

#### **~~7.001.42 Title IV-E Adoption Assistance Agreements [Eff. 02/01/2009]~~**

~~Title IV-E funds are available for adoption assistance payments to adopting parents for children that meet certain requirements.~~

~~This section has been moved in order to consolidate in one location all rules related to adoption assistance. Refer to Section 7.306.4.~~

#### **~~7.001.43 Title IV-E Eligibility - Foster Care Placement of a Child Under a Subsidized Adoption Assistance Agreement [Eff. 02/01/2009]~~**

~~This section has been moved in order to consolidate rules related to adoption assistance in one location. Refer to Section 7.306.4.~~

#### **~~7.001.44 Supplemental Security Income (SSI) [Eff. 02/01/2009]~~**

~~Supplemental Security Income is a federal monthly award granted to a child 0-21 years of age who has a verified disability.~~

- ~~A. Recipients of Social Security death benefits (SSA) or Supplemental Security Disability Income for Dependents (SSDI) shall not be coded in this fund source.~~
- ~~B. The county department shall make application to the Social Security Administration for any child who is believed to meet Supplemental Security Income eligibility criteria. Application for Supplemental Security Income is required for all children enrolled in the Children's Habilitation Residential Program (CHRP) waiver.~~
- ~~C. Concurrent eligibility for Title IV-E foster care and Supplemental Security Income (SSI) is allowed.~~
- ~~D. Required Time Frames—Application for benefits shall begin within 45 calendar days of the child's out-of-home placement in appropriate cases.~~

#### **~~7.001.45 Title IV-A Emergency Assistance [Rev. eff. 5/1/12]~~**

~~The county department shall determine eligibility for the Title IV-A Emergency Assistance Program anytime services are provided or purchased for families with children at risk of placement or when the worker transfers an intake case for on-going services.~~

##### **~~A. Eligibility Factors~~**

~~The eligibility determination shall be documented on the state prescribed form and shall include:~~

- ~~1. Whether an emergency exists, defined as the removal of a child from his or her home into publicly-funded care or state or county supervision, or risk of such removal as determined by the responsible state or county agency officials.~~
- ~~2. Whether the child has lived with a relative anytime within the 6 months preceding the Title IV-A Emergency Assistance application. See the Income Maintenance manual for requirements of relative (9 CCR 2503-1).~~
- ~~3. Whether the family's total gross annual income is under \$75,000.~~

**B. ~~Maintenance of Effort (MOE)~~**

~~Expenditures of services to or on behalf of eligible members of an Emergency Assistance eligible family can be attributed to the State's TANF Maintenance of Effort requirement if a child is living in the household with the parent or other adult relative. The Maintenance of Effort entitlement shall be recorded in the automated case management system if a case is opened for the child.~~

**C. ~~Required Time Frames~~**

~~The county shall complete the eligibility determination within thirty (30) business days of case opening. The eligibility effective date can be no earlier than the date when the application is initiated.~~

**~~7.001.46 Without Regard to Income [Rev. eff. 6/1/10]~~**

~~The Without Regard to Income entitlement shall be the default funding stream when a case is opened in the statewide automated system.~~

**~~7.001.5 Formal Assessment [Rev. eff. 8/1/12]~~**

~~A. For Program Areas 4, 5, and 6, the formal assessment together with the case plan which follows, shall be completed and documented within 60 calendar days of eligibility determination.~~

~~For some cases in Program Areas 4, 5, and 6, see Section 7.301 for family assessment criteria. For cases in Program Areas 4, 5, and 6, the Family Service Plan shall be completed within sixty (60) calendar days after case opening.~~

~~B. In all instances in which a case is accepted for investigation for ongoing services, the case shall be assigned to and monitored by a caseworker at all times. If the intake assessment determines the need for ongoing services, the case shall be transferred immediately following the last contact by the intake worker to ongoing services and immediately assigned. The planning process shall begin no later than seven working days from the date of transfer from intake to ongoing services.~~

**~~7.001.6 CASE CONTACT REQUIREMENTS [Rev. eff. 6/1/10]~~**

~~The primary purposes for case contacts shall be to assure child safety and well-being and move the case toward achieving identified treatment goals regardless of the reason the case is open. For Program Areas 4, 5, and 6, and in cases in which children and youth remain in the home or are placed out of the home, the county department shall have face-to-face and telephone contact with the children and youth, parents, and relevant collateral contacts as often as needed to assure the safety, permanency and well-being of the children (see Section 7.202.62, F).~~

~~Case contacts shall be documented in the statewide automated system. Minimum contact requirements are as follows:~~

**~~A. Program Areas 4, 5, and 6 In-Home Services~~**

~~The county department shall have at least monthly face-to-face contact with the child or youth. The county department shall have at least monthly face-to-face or telephone contact with the parent, parent surrogate or guardian, with face-to-face contact occurring at least every other month.~~

**~~B. Program Areas 4, 5, and 6 Out-of-Home Placement Services Concerning Children and Youth in Colorado~~**

~~The primary caseworker, that caseworker's supervisor, or the designated visitation caseworker for each child or youth in out-of-home placement for whom the county department has responsibility shall have face-to-face contact with that child or youth at least once every calendar month.~~

~~The "designated visitation caseworker" is an individual assigned responsibility for visiting the child or youth. The visitation caseworker may be a caseworker employed by the county department or another county department; a caseworker or contract caseworker in another state; or, a professional within the state who meets the qualifications listed at Section 7.000.6, M through O, and training listed at Section 7.000.61.~~

The name and role of the visitation caseworker assigned responsibility for visiting the child or youth shall be recorded in the assigned screen of the statewide automated data system and shall be updated if there is a change in the visitation caseworker. There shall be only one designated visitation caseworker for a child or youth at any one time.

Contact shall occur at a minimum of two face-to-face visits with the child or youth during the first thirty (30) days following the out-of-home placement, at least one of which shall be in the out-of-home placement, and a minimum of monthly face-to-face contact with the child or youth after the first month. A portion of every face-to-face contact shall occur out of the presence of the provider for the child or youth. No less than every other month, contact shall occur in the out-of-home placement where the child or youth resides and shall include visual assessment of where the child or youth sleeps.

The majority of monthly face-to-face contacts in a year shall occur in the child or youth's out-of-home placement. For children and youth in out-of-home placement, this is their place of residence. The child or youth shall be visited in his/her out-of-home placement during the first thirty (30) days of out-of-home placement and at least every other month while in out-of-home placement.

These requirements apply to children and youth for each month in which they spend more than half of the days of the month in out-of-home placement.

Children and youth designated as runaways who are in the county department's custody are included in the population of children and youth for whom the case contact requirements apply.

The caseworker who visits the child or youth shall have working knowledge of the case, including having conducted a recent review of contacts information in the statewide automated system prior to making a visit. The caseworker completing the visit shall record all contacts in the statewide automated system.

The designated visitation caseworker shall not have specific supervision responsibilities for the private placement facility where the child or youth is placed, nor shall the visitation caseworker be an employee of the placement facility where the child or youth is placed.

#### C. Program Areas 4, 5, and 6 Out-of-Home Placement Services Out of Colorado Concerning Children and Youth

The primary caseworker, that caseworker's supervisor, or the designated visitation caseworker or that caseworker's supervisor, for each child or youth in out-of-home placement out of Colorado shall have face-to-face contact with that child or youth at least once every calendar month.

For cases governed by the Interstate Compact on the Placement of Children (ICPC), the assigned or contracted caseworker in the state where the child or youth is placed may be the designated visitation caseworker. The Colorado caseworker assigned to the case shall document the designated visitation caseworker's visits in the statewide automated system if there is documentation in the case file from the designated visitation caseworker that describes the date, place and content of the visit with the child or youth for cases governed by ICPC. If there is an out-of-state designated visitation caseworker, that person shall use other means than review of the statewide automated system to assure that he or she has current working knowledge of the case at the time visits are made to the child or youth. A written report on the contact shall be requested by the custodial agency.

#### D. Program Area 5 Out-of-Home Placement Concerning Parents

While a child or youth remains in out-of-home placement, the county department shall have at least monthly contact with the parent, parent surrogate or guardian, with face-to-face contact occurring at least every other month. Such contacts shall occur until a motion for termination of parental rights is filed, or until "Return Home" is no longer the primary permanency goal.

#### E. Program Areas 4 and 6 Out-of-Home Services

While a child or youth remains in out-of-home placement, the county department shall have at least monthly face-to-face or telephone contact with the parent, parent surrogate or guardian. Such contacts shall occur until a motion for termination of parental rights is filed, or until "Return Home" is no longer the primary permanency goal.



#### ~~F. Finalized Subsidized Adoption Services~~

~~Contact shall occur every three years through face-to-face, telephone, or mail.~~

#### ~~G. Other Groups~~

~~For children or youth who are eligible for Home and Community Based Services or Home Health Care services, the contact requirements are a minimum of one face-to-face or telephone contact with the child or youth and family every six months. At least one of the contacts annually must be face-to-face.~~

#### ~~H. Contact Exceptions~~

~~If direct contact is impossible due to the child's location, the following information shall be documented in the statewide automated system indicating:~~

- ~~1. The case circumstances, including why the direct contact is not possible.~~
- ~~2. How contact shall occur.~~
- ~~3. How the county department shall monitor progress.~~

#### **7.001.7 CASE CLOSURE**

~~A. Services shall be terminated and the case shall be closed when one of the following are met:~~

- ~~1. Specific program eligibility criteria are not met.~~
- ~~2. Client withdraws.~~
- ~~3. Client no longer needs the service.~~
- ~~4. Client has moved out of county.~~
- ~~5. Client has died.~~
- ~~6. Services are completed.~~
- ~~7. The child is ready for emancipation or reaches his/her 21st birthday.~~

~~B. The worker shall document the following in the case record:~~

- ~~1. Reason(s) for case closure.~~
- ~~2. A summary of services provided, which includes progress made toward stated goals.~~
- ~~3. An assessment of risk of further child abuse or neglect for Program Area 5 cases.~~

~~C. The county department shall close a case on the Department's automated reporting system no later than 90 days after the last direct client contact. The county department shall assure the case is closed in the automated system as prescribed by the State.~~

~~D. The county department shall close a case on the Department's automated reporting system if there has been no direct client contact with the child and parents for 90 calendar days despite the repeated efforts of the county department to maintain contact.~~

~~E. Exceptions to the 90 calendar day limit may be necessary in cases where the county department has custody of the child. In such cases the county department shall document efforts to terminate county custody or document why such efforts are not in the best interest of the child.~~

## **7.002– DOCUMENTATION IN CASE RECORDS**

### **7.002.1 CASE RECORDING**

~~A. There shall be case recording in all active cases as required by the individual Program Area.~~

- ~~1. Frequency of case recording of case activity will be at a minimum every 6 months and more often as needed, according to the case plan or Family Service Plan.~~
- ~~2. Summary recording updating a case record shall be done at least every six months or whenever a case is transferred from county to county, between workers in a county, or when a case is closed.~~
- ~~3. For cases in Program Areas 4, 5, and 6, when there is a change in caseworker or a transfer of a service case to another county, the new caseworker shall have telephone or in-person contact with the child and/or provider within 30 calendar days after the change or transfer.~~

~~B. A written narrative summary of case activity shall include, but is not limited to, the following (a court report containing the same information will suffice):~~

- ~~1. Ongoing assessment of individual and/or family functioning.~~
- ~~2. Assessment of progress toward objectives and goals.~~
- ~~3. Chronology of significant events including dates of occurrence.~~
- ~~4. Method of intervention/treatment and impressions of effectiveness.~~
- ~~5. Changes and/or refinements of case plan.~~
- ~~6. Type and extent of court involvement.~~
- ~~7. Other significant individuals or agencies involved.~~

~~For cases in Program Areas 4, 5, and 6 in which an Administrative Review is substituting for a court review, the county shall assure that a written summary containing the above information is complete and present in the case file. The county shall submit this written summary with the Administrative Review findings to the court.~~

~~C. A case plan/agreement for each service period shall be developed which contains all of the required information.~~

~~D. Records of all pertinent contact sheets shall be prepared and prior to the periodic summary of such activities.~~

~~E. Evaluation and reassessments pertaining to each service period shall be conducted which reflect case movement toward the long-term goal.~~

~~F. A summary shall be completed within 30 calendar days of closure which shall include:~~

- ~~1. Summary of contacts~~
- ~~2. Reason for closure~~
- ~~3. Summary of services provided~~
- ~~4. Assessment of effectiveness of services in terms of client's stated goals including, where possible, the client's assessment of the experience.~~

### **7.002.11 Case Records**

- ~~A. Within 5 working days of application a master card, index, or computer file shall be initiated which will include the following:~~
- ~~1. Household number~~
  - ~~2. Identifying information (e.g., household composition, addresses, birth dates, Social Security Numbers)~~
- ~~B. Within 30 calendar days of decision of approval there shall be included in the case record as appropriate to the Program Area:~~
- ~~1. Functional assessment (initial)~~
  - ~~2. Family Services Plan~~
  - ~~3. Financial and social information~~
  - ~~4. Decision regarding service eligibility~~
  - ~~5. Demographic information~~
- ~~C. Case records shall also include but are not limited to the following as appropriate to the Program Areas:~~
- ~~1. Court orders and reports.~~
  - ~~2. Placement reports.~~
  - ~~3. Case recording.~~
  - ~~4. Relevant correspondence.~~
  - ~~5. Reassessment of functioning, eligibility, and Family Service Plan.~~
- ~~D. For Program Areas 4, 5, and 6, case record arrangement and maintenance shall follow the state prescribed format.~~

## **7.003 PURCHASE OF SERVICES**

### **7.003.1 DEFINITIONS**

- ~~A. Administrative services are personal services delivered by an individual or organization in lieu of the services being delivered directly by county department employees within the Merit System or county personnel system.~~
- ~~B. Program services are direct program costs.~~
- ~~1. Non-contractual program case services are a type of program service obtained by purchase for a specific client or client groups without the use of a contract. These involve a direct payment to a client or one-time or irregular vendor payment for services provided to a specific client where a contract would be difficult or impossible to obtain.~~
  - ~~2. Contractual program services are obtained by purchase for a specific client or client groups and a contract is required.~~

### **7.003.2 CONTRACTING REQUIREMENTS**

- ~~A. The county department shall enter into a contract before the initiation of administrative or program services, except for non-contractual program case services identified in this section.~~

- ~~B. The county department shall initiate a written corrective action plan or terminate the contract when it determines that services do not comply with the terms of the contract.~~
- ~~C. The county department has direct responsibility for, and shall not purchase activities of:~~
- ~~1. Service eligibility determination or redetermination;~~
  - ~~2. Development of the Services Agreement or Family Services Plan;~~
  - ~~3. Authorization of purchased services;~~
  - ~~4. Service fee determination;~~
  - ~~5. Monitoring of purchased services.~~
- ~~D. County department employees shall not act as a provider of purchased program services.~~
- ~~E. The county shall purchase services only when the rates of payment for services do not exceed the amounts reasonable and necessary to assure the quality of service. Reasonable means the cost does not exceed the community prevailing rate. Necessary means the service is directly related to the client's need.~~
- ~~F. When contractors are required by statute to be licensed, registered, or certified in order to perform the purchased service, county departments of social services shall assure that such requirements are met, before the execution of the contract. In addition to or in the absence of such statutory requirements, the contractor shall meet standards or criteria as established by the State Department. All personnel engaged in the administration or direct delivery of services purchased by the county department shall meet qualifications as provided under Merit System rules and regulations or an approved county personnel system.~~
- ~~G. The county department shall purchase services only from independent contractors. State reimbursement shall be available only for purchase of service contracts where the relationship between the county department of social services and the contractor is a relationship of employer-independent contractor, not that of employer-employee.~~
- ~~H. In cases where the contractor status is not clear, status resolution shall be in favor of the employee status classification.~~
- ~~I. For program or administrative contracts in the amount \$10,000 or less, the county department may use its own selection criteria for awarding purchase of service contracts.~~
- ~~J. The county department shall establish a separate file for each contract in excess of \$10,000 and include the following documentation:~~
- ~~1. Supporting the basis for award cost or price; and~~
  - ~~2. Identifying the procurement method used (formal advertising or negotiation) and;~~
    - ~~a. If formal advertising was used, the county shall include descriptive material used to solicit bids and copies of published bid solicitation notices.~~
    - ~~b. If negotiation was used, include justification for using this procurement method. Justification shall include one or more of the five acceptable reasons for negotiation listed below.~~
- ~~K. The county department shall use the most formal procurement method that is possible and practical.~~
- ~~1. Formal advertising is the procurement method that involves open and free competition i.e., public notice of bid solicitations, a clear and adequate description of the technical requirements for the service to be procured, sealed bids, and the public opening of bids.~~

2. ~~Procurements may be negotiated if it is not practicable or feasible to use formal advertising. Generally, such procurements may be negotiated if one or more of the following conditions prevail:~~
  - a. ~~The public exigency will not permit the delay incident to advertising.~~
  - b. ~~The material or service to be procured is available from only one person or firm.~~
  - c. ~~The contract is for personal or professional services, or for any service to be rendered by a university, college, or other educational institution. (Personal services here refer to a contract with an individual for the services of that individual. Professional services refer to services rendered by a person or organization licensed or certified by the state.)~~
  - d. ~~No acceptable bids have been received after formal advertising.~~
  - e. ~~Formal advertising is otherwise not practicable or feasible, and negotiation is authorized by applicable law, rules, or regulations.~~

L. ~~Excluded from requirements of this section "Purchase of Services," are services purchased under the JOBS or the Employment First Program.~~

M. ~~Any county department and child placement agency entering into a contract for the provision of foster care services shall include a provision in the contract that recognizes a right of the State Department or county department to recover any funds misused by the Child Placement Agency and to withhold subsequent payments. The provision in the contract shall provide for an appeal of the decision to recover or withhold the funds.~~

### **7.003.3 PURCHASE OF PROGRAM SERVICES [Rev. eff. 12/1/12]**

A. ~~The purchase of program services:~~

1. ~~May or may not require a contract depending upon the specific service purchased.~~
2. ~~Does not require state department prior approval as long as the service is authorized by state rule.~~

B. ~~Authorized Non-Contractual Program Case Services~~

1. ~~Transportation for children in out-of-home care, limited to the following purposes:~~
  - a. ~~For return of runaways, who are in county department custody, to their Colorado home county.~~
  - b. ~~For a child in out-of-home care to receive services specified in the Family Services Plan that are directly related to visitation and reunification.~~
  - c. ~~To facilitate a permanent plan through the Interstate Compact.~~
  - d. ~~To access one-time physical, dental, and psychological examinations for children in out-of-home care who are not Medicaid eligible and have no other insurance.~~
2. ~~A one-time physical, dental, and psychological examination for children in out-of-home care who are not Medicaid eligible and have no other insurance.~~
3. ~~Case services authorized in the Adoption Services and Relative Guardianship Assistance Program sections that are specified in a current signed Adoption or Relative Guardianship Assistance Agreement.~~
4. ~~Other case services provided to children in out-of-home placement when such services are not a part of either room and board or Medicaid treatment or case management services.~~

C. ~~Contractual Program Services~~

1. ~~Services may be obtained by purchase for specific clients using the standardized form contracts, identified by number in the paragraph below. Standardized form contracts comply with federal and state statutes and/or regulations for the purchase of service.~~

a. ~~Child Welfare Child Care: Use contract form SS-19 as appropriate.~~

b. ~~Child Foster Care Service: Use state authorized contract forms as appropriate.~~

c. ~~Psychological Evaluations, when purchased once and not through an agency contract: Use contract form SS-21B. Psychological evaluations shall not be purchased for children or adults who are eligible for Title XIX (Medicaid). Third party payment for psychological evaluations shall be used as first payer where possible.~~

1) ~~Limited purposes for children:~~

a) ~~For assessment of the need for protection—includes psychological evaluations for parents or substitute caretakers. Substitute caretakers are persons providing care as an alternative to the parent, i.e., includes guardians or legal custodians and excludes foster parents.~~

b) ~~For foster care placement.~~

c) ~~For adoptive home placement.~~

2) ~~Limited purposes for adults:~~

~~For biological parents, on behalf of children in foster care.~~

d. ~~Physical evaluations, when purchased once and not through an agency contract shall use the state authorized contract form. Physical evaluations shall not be purchased with program service funds for children or adults who are eligible for Title XIX (Medicaid). Third party payment for physical evaluations shall be used as first payer where possible.~~

1) ~~Limited purposes for children:~~

a) ~~Needing assessment of need for protection.~~

b) ~~In Child Welfare Child Care.~~

c) ~~In out-of-home care.~~

2) ~~Limited purposes for adults in Program Area 2:~~

~~For assessment of medical conditions.~~

e. ~~Evaluation shall include the cost of the examination as well as any written and/or verbal interpretation of the results of the psychological or physical evaluation.~~

f. ~~Core Services Program Services: County departments with state approved Core Services plans may use Form FPP-1 or develop and use their own contract for the purchase of Core Services. County developed contracts shall meet the contract content requirements provided in Section 7.003.4, D.~~

#### ~~D. Billing and Payment~~

~~County department billings for the purchase of program service shall follow state procedures.~~

#### **7.003.4 ADMINISTRATIVE SERVICES**

~~A. The purchase of administrative services requires:~~

~~1. A contract.~~

~~2. State department approval.~~

~~B. The content of all administrative contracts shall comply with the requirements as established by the state department.~~

~~C. The county department shall monitor the provision of services at least every six months under an administrative service contract for compliance with the contract and maintain written documentation of such monitoring including dates of monitoring and results/conclusions.~~

~~D. Contract Content~~

~~1. If a county department determines that certain administrative services are to be purchased, the county department shall negotiate terms and write a contract for the purchase.~~

~~2. When the county department writes an administrative service contract, the contract shall contain:~~

~~a. All terms of the contract in one instrument, be dated, and be executed by authorized representatives of all parties to the contract prior to the date of the implementation; and~~

~~b. A definite beginning and ending date for provision of services up to a maximum of one (1) year duration; and~~

~~c. A detailed description of the services to be provided and of the methods, including subcontracting, to be used by the contractor in carrying out its obligations under the contract; and~~

~~d. A stated number of units of service at a specific dollar rate, and/or for a specific dollar amount; and~~

~~e. The method and source of payment to the contractor; and~~

~~f. The source of funds and provision that "Payment pursuant to this contract, if in federal and/or state funds, whether in whole or in part, is subject to and contingent upon the continuing availability of federal and/or state funds for the purposes hereof;" and~~

~~g. Provision that no fees shall be imposed by the contractor related to services provided under this contract; and~~

~~h. Provision that the contractor meets applicable state licensing requirements, and/or federal standards and/or qualifications as provided under Merit System rules and regulations or county personnel system; and~~

~~i. Provision that contractor strictly adheres to all applicable federal, state, and local laws that have been or may hereafter be established; and~~

~~j. The address(es) of facilities to be used in providing services; and~~

~~k. Provision that the contractor shall comply with the requirements of the Civil Rights Act of 1964, the requirements of Section 504 of the Rehabilitation Act of 1973, Americans with Disabilities Act, and for safeguarding information according to rules of the state department; and~~

~~l. Provision that any subcontracts permitted by the contract shall be subject to the requirements of the contract as listed here, and that the contractor is responsible for the performance of any subcontractor; and~~

- ~~m. A statement specifying requirements for fiscal and program responsibility, billing, records, controls, reports, and monitoring procedures; and~~
- ~~n. Provision for access to financial, program, and other records pertaining to services provided under this contract by county, state, and federal officials, and others as authorized in writing by the county; and~~
- ~~o. Provisions for contractor to keep financial, program, or other records pertinent to this contract for a period of 5 years from the contract termination date; and~~
- ~~p. Provision that the parties of the contract intend that the relationship between them contemplated by the contract is that of employer-independent contractor; and~~
- ~~q. Provisions for termination by either party including the manner by which termination will be effected and the basis for settlement. In addition, such contracts shall set forth the conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor; and~~
- ~~r. For contracts over \$10,000 certain provisions that will allow for administrative, contractual, or legal remedies in instances in which contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate; and for contracts in excess of \$100,000, the contract must contain provisions for compliance with the Clean Air Act and the federal Water Pollution Control Act.~~

#### ~~E. Additional County Option Contract Components~~

~~The county department may add optional provisions to the above required standard contract items.~~

#### ~~F. Billings and Payment~~

- ~~1. County department billings for administrative service contractual purchase of services shall follow state procedures.~~
- ~~2. State department reimbursement for a properly approved county administrative service contract is subject to the availability of funds within the county's allocation.~~



## **7.000.1 PROGRAM AREAS (PA) AND TARGET GROUPS**

Services are available from county departments in the following Program Areas:

- A. Program for Prevention and Intervention Services to Children, Youth and Families at Risk of Involvement with Child Welfare (PA3)

The Program Area 3 (PA3) program provides prevention and intervention services for children, youth, and families at risk of involvement with child welfare. Services may be provided to assist families to safely care for their children.

- B. Program for Youth in Conflict (PA 4)

Program Area 4 services are provided to reduce or eliminate conflicts between youth and their family members or the community when those conflicts affect the youth's well-being, the normal functioning of the family or the well-being of the community. The focus of services shall be on alleviating conflicts, protecting the youth and the community, re-establishing family stability, or assisting the youth to emancipate successfully.

Target groups for Program Area 4 are children and youth who are beyond the control of their parents or guardians; and, children and youth whose behavior is such that there is a likelihood that they may cause harm to themselves or to others or who have committed acts that could cause them to be adjudicated a delinquent child by the court.

- C. Program for Children in Need of Protection (PA 5)

Program Area 5 services are provided to protect children, whose physical, mental or emotional well-being is threatened by the actions or omissions of parents, legal guardians or custodians, or persons responsible for providing out-of-home care, including a foster parents, an employee of a residential child care facility, and a provider of family child care or center-based child care.

Target groups for Program Area 5 are children whose physical, mental, or emotional well-being is threatened or harmed due to the abuse or neglect and children who are subjected to circumstances in which there is a reasonable likelihood that they are at risk of harm due to abuse or neglect by their parents or caretakers which shall include children who are alleged to be responsible for the abuse or neglect and are under the age of ten (10).

- D. Program for Children and Families in Need of Specialized Services (PA 6)

Program Area 6 services are to provide statutorily authorized services to specified children and families in which the reason for service is not protective services or youth in conflict. These services are limited to children and families in need of adoption assistance, relative guardianship assistance, or Medicaid only services, or to children for whom the goal is no longer reunification. The purpose of services in Program Area 6 is to fulfill statutory requirements in the interests of permanency planning for children. Children must meet specific program requirements to receive services under the target groups.

Target Group information is located at Section 7.203 (12 CCR 2509-3).

- E. Program for Resource Development (PA 7)

The purpose of Program Area 7 is to develop and coordinate the external resources necessary to fulfil the objectives of the social services programs.

Target Groups served by this program area are the individuals who will be serving children and families in such roles as volunteers, foster or kinship parents for children, adults, personal caregivers, homemakers or child care parents, or adoptive parents.

## 7.000.2 DEFINITIONS

A. The following are definitions of commonly used terms used in these rules:

“Abuse” or “child abuse and/or neglect” is defined in Section 19-1-103(1) and 19-3-102(1), C.R.S.

“Agency response” means the protocol prescribed by the state and county departments that guides practice pertaining to the protection of children in the dual-track response system.

“Assessment” means the work conducted by a case worker to engage the family and the community to gather information to identify the safety, risks, needs and strengths of a child, youth, family, and community to determine the actions needed. “Assessment” and “investigation,” as used in Sections 19-3-308 - 19-3-308.5, C.R.S., are interchangeable in these rules.

“Authorized caregiver” means an individual or agency who is authorized by a parent, guardian or custodian to provide care to a child and who agrees to provide such care. The authorization may be temporary and need not be in writing unless otherwise required by law.

“Caregiver” means a child's parent, stepparent, guardian, legal custodian, relative, or any other person who resides in the child's home or who is regularly in the child's home for the purpose of exercising care over the child. It also includes the spousal equivalent or domestic partner of a parent or legal guardian. A “caregiver” shall not include a person who is regularly in the child's home for the purpose of rendering care for the child if such person is paid for rendering care and is not related to the child.

“Child” means any person from birth to eighteen (18) years of age.

“Child Care Service” means care of a child under the age of thirteen (13) years for a portion of a day, but less than twenty-four (24) hours. These services may be provided in the child's own home by a person other than the parent or the primary caregiver in a relative home, an exempt day care home, in a licensed or certified day care home, or licensed group day care facility. Older children who need protection or have a special need may be approved for service by the county department.

“Child in need of services” includes a child who receives services regardless of whether the services are court ordered, county provided or voluntarily arranged by the family, or a child who needs services even if the services are not provided.

“Child's vulnerability” refers to circumstances that place a child at a greater risk for abuse and/or neglect such as being six years of age or younger or having limited capacity to self-protect or provide self-care due to physical, emotional, and/or cognitive limitations.

“Child Welfare Child Care” means child care assistance used to maintain children in their own homes or in the least restrictive out-of-home care when there are no other child care options available. This care is less than twenty-four (24) hours daily. See section 7.302, “Child Welfare Child Care” (12 CCR 2509-4).

“Child Welfare Services” are the services and payments for services (other than medical services covered by the “Colorado Medical Assistance Act”) available, directly or indirectly, through the state and county departments for the benefit of eligible persons pursuant to rules adopted by the State Department or State Board of Human Services.

“Client” means any person applying for or receiving child welfare services from a county department.

“Colorado Safety Assessment Tool” means the tool in the State automated case management system that guides a case workers through a safety assessment process.

“Concurrent Planning” means the simultaneous preparation of plans to: 1) assist the child's parents or caregivers in completing a treatment plan that, when completed successfully will allow the child to return home safely; and, 2) place the child in a setting that will become the child's permanent home if the parents or caregivers are unable to successfully complete their treatment plan.

“Continuously available” means the assignment of a person to be near an operable telephone, pager system, cellular telephone, or to have such arrangements made through agreements with the local law enforcement agencies.

“County Department” means a county department of human or social services or, if applicable, the county agency responsible for providing child welfare services as defined by section 26-5-101(3), C.R.S.

“Delinquent act” means a violation of any statute, ordinance, or order enumerated in Section 19-2-104(1) (a), C.R.S. If a juvenile is alleged to have committed or is found guilty of a delinquent act, the classification and degree of the offense shall be determined by the statute, ordinance, or order that the petition in delinquency alleges was violated.

“De novo” means that an issue is reviewed once again as if the appeal were the first review.

“Differential Response” is a dual-track response system for referrals that meet the criteria for assignment. The two response options are the High Risk Assessment (HRA) and the Family Assessment Response (FAR).

“Domestic partner” means a person who is in a family-type living arrangement with a parent and who would be a stepparent if married to that parent. “Domestic partner” and “spousal equivalent” are interchangeable in these rules.

“Domestic violence” means the commission or threatened commission of violence, including coercion, control, punishment, intimidation or revenge upon a person by a person with whom there is or was an intimate relationship.

“Egregious incident of abuse and/or neglect” means an incident of suspected abuse and/or neglect involving significant injury, violence, torture, use of cruel restraints, or other similar, aggravated circumstance.

“Emancipation from foster care” occurs when a youth reaches eighteen (18) years of age and is no longer under the jurisdiction of the court or is married or enters military service.

“Emancipation Transition Plan” means a personalized youth-driven written document that supports emancipation from foster care and is intended to prevent the youth from becoming homeless.

“Emotional abuse” means an identifiable and substantial impairment of the child's intellectual or psychological functioning or development or a substantial risk of impairment of the child's intellectual or psychological functioning or development as a result of the action or inaction of the alleged person responsible for abuse and/or neglect.

“Environment injurious to the welfare of a child” is when the environment caused injuries to the welfare of the child or reasonably could be foreseen as threatening to the welfare of the child and is in control of the parent, guardian, custodian or authorized caregiver.

“Expunge” is to designate a report or record as not having existed for the purpose of employment and background screening. However, a founded finding of abuse and/or neglect that is later expunged shall not preclude the county department from maintaining records of the report in the case file or in the State automated case management system for purposes of future safety and risk assessments.

“Facility” includes, but is not limited to: family child care homes, foster care homes, and any other facility subject to the Colorado “Child Care Licensing Act” and described in Section 26-6-102, C.R.S.

“Fair Hearing” means any procedure by which an Administrative Law Judge reviews facts in relation to an adverse action taken by a county department pursuant to section 3.850 of the Department of Human Services’ Income Maintenance rules (9 CCR 2503-8).

“Family” means parents, adults fulfilling a parental role, guardians, children, and others individuals related by ancestry, adoption, or marriage or as defined by the family.

“Family Assessment Response (FAR)” means the differential response track established for low and moderate risk situations where no finding of abuse and/or neglect is made.

“Fatal neglect,” for the purpose of determining severity level, is when the physical or emotional needs of the child are not met resulting in death.

“Fatal physical abuse,” for the purpose of determining severity level, means excessive or inappropriate force used resulting in a child’s death.

“Finding” means the determination about whether an incident of abuse and/or neglect occurred.

“Foster care” means the placement of a child into the legal custody or legal authority of a county department for physical placement of the child in foster family care homes, certified and non-certified kinship family care homes, or licensed facility.

“Founded” means that the abuse and/or neglect assessment established by a preponderance of the evidence that an incident(s) of abuse and/or neglect occurred. “Founded” can also be utilized in a referral when there is a law enforcement fatality investigation with no surviving child sibling, or a law enforcement investigation of a third party incident of abuse and/or neglect. “Founded” and “confirmed,” as used in sections 19-3-308 - 308.5, C.R.S., are interchangeable in these rules. “Framework” is a method for organizing and analyzing information as it pertains to child safety.

“Good cause” is a legitimate reason why a process should be modified. Such reasons may be that it was not possible for a party to meet a specified deadline and there was incapacity of the party or representative, lack of proper notice of the availability of the appeal process, additional time is required to obtain documents which were timely requested but not delivered, or other circumstances beyond the control of the party.

“Gray Area” is a heading included in the RED Team framework. This section captures any information, questions or areas needing further exploration. This may include risk factors that require some type of follow up to determine their validity and impact on the child(ren). Information captured in the “Gray Area” section may be routinely reviewed by child welfare staff to determine trends, or potential areas needing further discussion and /or elaboration when gathering information from reporters.

“High Risk Assessment (HRA)” means the differential response track established for high risk situations where the alleged victim child(ren) are identified and a finding of abuse and/or neglect is made.

“Household” is defined as:

1. One or more adult(s) and child(ren), if any, related by blood, or law, residing together.
2. Where adults, other than spouses, domestic partners, or spousal equivalent reside together, each is considered a separate household. Emancipated minors and children living under the care of individuals not legally responsible for that care are also considered separate households.
3. When determining monthly gross income in establishing a foster care fee, a stepparent, who is not legally responsible for a child, is not considered a member of the household. Stepchildren for whom the custodial parent(s) are not legally responsible are not considered part of the household in establishing a foster care fee.

“Impending danger” means a threat(s) to child safety not occurring at present but likely to occur in the near future and likely to result in moderate to severe harm to a child.

“Inconclusive” means that the abuse and/or neglect assessment established that there was some likelihood that an incident(s) of abuse and/or neglect occurred but assessment could not obtain the evidence necessary to make a founded finding.

“Independent Living Arrangement (I.L.A.)” means a placement in foster care where a youth lives independently in the community under the supervision of the county department. Receiving funds is not a

necessary condition for a youth to be in an I.L.A. Youth shall receive casework services on I.L.A. with or without receipt of the I.L.A. stipend.

“Independent Living Assessment” means an evaluation of the youth's daily living skills. This assessment will document the youth's strengths and needs, as well as capacity and motivation to learn the appropriate skills.

“Independent Living Plan (I.L.P.)” means part of the Family Services Plan that includes those services designed to promote or enhance a youth's capacity to make a successful transition from out-of-home care to living independently and maintaining self-sufficiency.

“Intrafamilial abuse and/or neglect” means any case of abuse and/or neglect, as defined in Sections 19-1-103(1) and 19-3-102(1) and (2), C.R.S., that occurs within a family or non-certified kinship care context by a caregiver; except that “intrafamilial abuse” shall not include abuse and/or neglect by a person who is regularly in the child's home for the purpose of rendering care for the child if such person is paid for rendering care and is not related to the child.

“Institutional abuse” means any case of abuse and/or neglect that occurs in any public or private facility in the state that provides out of the home care for children. Institutional abuse shall not include abuse and/or neglect that occur in any public, private, or parochial school system, including any preschool operated in connection with said system; except that, to the extent the school system provides licensed child care before and/or after school, abuse that occurs while such services are provided shall be institutional abuse.

“Juvenile” means any person between ten (10) and twenty-one (21) years of age.

“Kin” are relatives, persons ascribed by the family as having a family-like relationship, and individuals who have a prior significant relationship with the child or youth. These relationships take into account cultural values and continuity of significant relationships.

A “known” incident of abuse and/or neglect exists when a child has been observed being subjected to circumstances or conditions that would reasonably result in abuse and/or neglect.

“Mandatory reporter” means a person required by Section 19-3-304, C.R.S., to report suspected abuse and/or neglect.

“Minor neglect,” for the purposes of determining severity level, is when the physical or emotional needs of the child are marginally or inconsistently met, but there is little or no impact on the child's functioning.

“Minor physical abuse,” for the purposes of determining severity level, is excessive or inappropriate force used resulting in a superficial injury.

“Moderate neglect,” for the purpose of determining severity level, is when the physical or emotional needs of the child are inadequately met resulting in some impairment in the child's functioning.

“Moderate physical abuse,” for the purposes of determining severity level, is excessive or inappropriate force used resulting in an injury that may require medical attention.

“Moderate to severe harm” means the consequence of maltreatment at a level consistent with a moderate, severe or fatal level of physical abuse, sexual abuse and/or neglect.

“Near fatality” means a case in which a physician determines that a child is in serious, critical, or life-threatening condition as the result of sickness or injury caused by suspected abuse and/or neglect.

“Preponderance of evidence” means credible evidence that a claim is more probably true than not.

“Present danger” means an immediate, significant, and clearly observable threat to child safety that is actively occurring and will likely result in moderate to severe harm to a child.

“Primary caregiver” means the caregiver who assumes the most responsibility for care of the child.

“Provider” means a vendor of goods and/or services under the child welfare services program.

“Purchased services” are those services made available to clients through another public agency, a private agency, or a private individual under contract with the state or county department.

“Reasonable efforts” means the exercise of diligence and care throughout county department involvement with children, youth, and families.

“RED Team” is the acronym for Review, Evaluate and Direct. The RED Team is a group decision making process that utilizes the framework and agency response guide to determine county department response to referrals.

“Referral” means a report made to the county department that contains one or more of the following:

1. Allegations of child abuse and/or neglect;
2. Information that a child or youth is beyond the control of his/her parent;
3. Information about a child or youth whose behavior is such that there is a likelihood that the child or youth may cause harm to him/herself or to others, or who has committed acts that could cause him/her to be adjudicated by the court as a delinquent;
4. Information indicating that a child or youth meets specific Program Area 6 requirements and is in need of services.

“Risk” means detailed worries/concerns of what could happen in the future (risk level indicates the likelihood).

“Safe” means a condition where there is no present or impending threat of moderate to severe harm to a vulnerable child from current known family conditions, or the protective capacities in the family are sufficient to control existing dangers of threats of danger and protect the vulnerable child.

“Safety intervention” means the actions and decisions required to:

1. Identify and assess threats to child safety;
2. Plan for an unsafe child or children to be protected;
3. Facilitate caregivers in taking responsibility for child protection; and
4. Manage plans designed to assure child safety while a safe and permanent home is established.

“Safety Plan” means a time-limited written plan that:

1. Establishes protection for a child in an effort to prevent out of home placement in situations of moderate to severe harm;
2. Is made by the family or natural supports, safety service providers, and the county department; and
3. Does not rely on the person responsible for abuse and/or neglect to initiate protective actions in order for the plan to be operationalized.

“Severity level” means the assessment of the harm to the child victim or the act of abuse and/or neglect as minor, moderate, severe or fatal as defined in these rules. Sexual abuse severity is to be determined based upon the type of contact, duration of contact, and the emotional impact upon the child.

“Severe neglect,” for the purpose of determining severity level, is when the physical or emotional needs of the child are not met resulting in serious injury or illness.

“Severe neglect – egregious,” for the purpose of determining severity level, is when the physical or emotional needs of the child are not met resulting in serious injury or illness and involves significant violence, torture, use of cruel restraints, or other similar, aggravated circumstance.

“Severe neglect – near fatal,” for the purpose of determining severity level, is when the physical or emotional needs of the child are not met resulting in serious injury or illness and is a case in which a physician determines that a child is in serious, critical, or life-threatening condition as the result of sickness or injury caused by suspected abuse and/or neglect.

“Severe physical abuse,” for the purpose of determining severity level, means excessive or inappropriate force used resulting in a serious injury that requires medical attention or hospitalization.

“Severe physical abuse – egregious,” for the purpose of determining severity level, means excessive or inappropriate force used resulting in a serious injury that requires medical attention or hospitalization and involves significant violence, torture, use of cruel restraints, or other similar, aggravated circumstance.

“Severe physical abuse – near fatal,” for the purpose of determining severity level, means excessive or inappropriate force used resulting in a serious injury that requires medical attention or hospitalization and is a case in which a physician determines that a child is in serious, critical, or life-threatening condition as the result of sickness or injury caused by suspected abuse and/or neglect.

“Sibling” means one of two or more individuals who is descended from one or two mutual parents. The term also includes stepsiblings and former stepsiblings.

“Spousal equivalent” means a person who is in a family-type living arrangement with a parent and who would be a stepparent if married to that parent. “Spousal equivalent” and “domestic partner” are interchangeable in these rules.

“State automated case management system” means the state automated child welfare information system computer database.

The “State Department” means the Colorado Department of Human Services.

“Supplemental Security Income (SSI)” means the monthly cash payments made by the Social Security Administration to an aged, blind, or disabled individual who meets the requirements under Title XVI of the Social Security Act.

“Supportive Activities” means those activities of the informational, statistical, clerical personnel, and staff training systems that support the child welfare services program.

“Support Plan” means a written plan developed in the absence of safety concerns. It is family-driven, department-facilitated, and includes the family’s network, which may include extended family, friends, informal supports and community resources. A support plan is concrete, agreed upon, and includes specific actions that the family and network are doing to mitigate risk and ensure future safety.

A “suspected” incident of abuse and/or neglect means an incident based on a single act or patterns of behavior, conditions, statements or injuries that would lead to a reasonable belief that abuse and/or neglect has occurred or that there is a serious threat of harm to the child.

“Third-party abuse and/or neglect” means a situation where a child is subjected to abuse and/or neglect by any person who is not a parent, stepparent, guardian, legal custodian, spousal equivalent, or any other person not included in the definition of intrafamilial abuse or institutional abuse.

“Threat of moderate to severe harm” relates to conditions, behaviors or attitudes that could result in moderate to severe harm.

“Traditional response” means the response used by counties not selecting to participate in Differential Response for all assessments of low, moderate, and high risk.

“Unfounded” means that the abuse and/or neglect assessment established that there is clear evidence that no incident of abuse and/or neglect occurred.

“Unsafe” means a condition where there is a present or impending threat(s) of moderate to severe harm to a child and protective capacities of the caregiver(s) are insufficient to control danger or threats of danger.

“Youth” means any person at least twelve (12) years of age and under twenty-one (21) years of age.

B. The following are definitions of terms related to assessments of medical neglect of infants and toddlers with disabilities:

“Designated Hospital Liaison” means the person named by the hospital or health care facility to act as the contact with the county department in all aspects of cases of suspected withholding of medically-indicated treatment from infants and toddlers with disabilities and with life threatening conditions.

“Hospital Review Committee (H.R.C.)” means an entity established to deal with medical and ethical dilemmas arising in the care of patients within a hospital or health care facility. Where they exist, the committee may take many organizational forms, such as an “infant care review committee” or an “institutional-bioethics committee”. The functions for a committee may differ from institution to institution, including the authorization to review and recommend treatment in specific cases.

“Infant with a disability” means a child less than one year of age who was born with a life-threatening condition and who may have additional non-lethal physical or mental disabilities. The definition includes children over the age of one year who have been continuously hospitalized since birth, who were born extremely premature, or who have a long-term disability. These procedures do not imply that treatment should be changed or stopped when an infant reaches one year of age. The primary population to be addressed in these regulations is that of the hospitalized infant. Any other situations involving medical neglect of children will be provided for under the existing protections of the Colorado Children's Code regarding medical care of children.

“Reasonable medical judgment” means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

“Withholding of medically-indicated treatment” means the failure to respond to the infant's life-threatening conditions by providing treatment (including appropriate nutrition, hydration, and medication) that, in the treating physician's reasonable medical judgment, will be most likely to be effective in improving or correcting all such conditions. The term does not include, however, the failure to provide treatment to an infant (other than appropriate nutrition, hydration or medication) when, in the treating physician's (or physicians') reasonable medical judgment any of the following circumstances apply:

1. The infant is chronically and irreversibly comatose;
2. The provision of treatment would merely prolong dying, not be effective in improving or correcting all of the infant's life-threatening conditions, or otherwise be futile in terms of the survival of the infant;
3. The provision of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane.

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## (12 CCR 2509-2)

### 7.100

#### 7.101 REFERRALS

"Referral" means a report made to the county department that contains one or more of the following:

- A. Allegations of child abuse or neglect as defined in Section 19-1-103(1), C.R.S.;
- B. Information that a child or youth is beyond the control of his/her parent;
- C. Information about a child or youth whose behavior is such that there is a likelihood that the child or youth may cause harm to him/herself or to others, or who has committed acts that could cause him/her to be adjudicated by the court as a delinquent;
- D. Information indicating that a child or youth meets specific Program Area 6 requirements and is in need of services.

#### 7.101.1 DOCUMENTATION OF REFERRALS

All reports that meet the definition of a referral shall be entered into the state automated case management system. Any time a case is opened, it shall come through the referral or assessment process in the state automated case management system with the exception of Interstate Compact on the Placement of Children (ICPC), out of state subsidized adoption, and Division of Youth Corrections (DYC) Medicaid-only.

#### 7.102 HOTLINE REQUIREMENTS (Reserved for Future Use)

### 7.103

#### 7.103.1 RECEIPT OF REFERRAL ALLEGING INTRAFAMILIAL OR THIRD PARTY ABUSE AND/OR NEGLECT – INFORMATION TO BE GATHERED

Upon receipt of a referral alleging intrafamilial or third party abuse and/or neglect, county departments shall gather and document as much of the following information, as available:

- A. Reporting party's name, address, and telephone number, e-mail, fax, role, agency and relationship to the alleged victim child(ren) and family;
- B. Alleged victim child(ren)'s name, address, current specific location, school (if applicable), birth date(s), and extent of injuries;
- C. Family and household members, names, dates of birth, and relationship to each other and alleged victim child(ren);
- D. Name, date of birth, present location and, and current or last known address of the person alleged to be responsible for the abuse and/or neglect;
- E. The presenting problems and specific allegations of the abuse and/or neglect, and the nature of the environment;
- F. The duration and nature of the alleged abuse and/or neglect and whether the conditions have worsened, improved, or remained unchanged;
- G. The date, time and location the alleged victim child(ren) were last seen by the reporting party;
- H. The nature of any concerns regarding the interactions between the caregivers;

- I. The nature of any law enforcement involvement with the family;
- J. Whether there are any weapons in the home;
- K. The nature and extent of any drug use by family or household members;
- L. The nature of any other environmental hazards in the home (e.g., vicious animals, methamphetamine labs, criminal activity, etc.);
- M. The name, address and telephone number of other individuals who may have information about the referral;
- N. The identity and contact information of collateral agencies and individuals involved with the family;
- O. Records check result of internal and state automated case management system inquiries;
- P. Date and time referral received;
- Q. Family strengths and supports;
- R. Possible solutions for resolving the presenting problem;
- S. Race and primary language of the child and family;
- T. Information as to whether or not the children have American Indian or Alaskan Native heritage, and if so, the Tribal affiliation; and,
- U. Any actions taken by the referral source or reporting party.

**7.103.11 Jurisdiction for Referrals Concerning Intrafamilial and Third-Party Abuse and/or Neglect**

- A. The county department with jurisdiction for responding to a referral concerning intrafamilial or third-party abuse is the department for the county in which the alleged victim child(ren) resides the majority of the time except when custody of the alleged victim child(ren) is shared equally between caregivers. When custody is shared equally between caregivers, the county department with jurisdiction is the department for the county in which the person(s) alleged to be responsible for the abuse and/or neglect reside, if known.
- B. When a family is homeless as defined in 42 U.S.C. Section 1130(A) and (B), the county department with jurisdiction is the department for the county in which the alleged victim child(ren)'s primary nighttime residence is located.
- C. If the jurisdiction is unable to be determined by A or B, above, the county department with jurisdiction is the department for the county in which the alleged victim child(ren) are currently present, as set forth in Section 19-3-201, C.R.S.
- D. County departments shall use available resources to determine jurisdiction including, but not limited to:
  - 1. Colorado benefits management system;
  - 2. Alleged victim child(ren)'s school or daycare;
  - 3. History within the state automated case management system;
  - 4. Colorado courts;
  - 5. Where services may be provided.

**7.103.12 Transfer of Jurisdiction**

- A. If the county department that receives a referral determines that another county department has jurisdiction, the county department that received the referral shall:
  1. Gather and document all information as available in Section 7.103.1, A;
  2. Gather and document all information necessary to determine jurisdiction; and
  3. Contact the county determined to have jurisdiction within the following timeframes:
    - a. If the referral is assigned an immediate response, within four (4) hours of determining jurisdiction.
    - b. If the referral is assigned either a three (3) day or five (5) day response, within one (1) business day of determining jurisdiction.
- B. The county determined to have jurisdiction shall screen the referral.
- C. When the county department that received the referral makes a decision based upon the referral prior to determining jurisdiction, the county department determined to have jurisdiction shall uphold that decision including assignment and response time, unless:
  1. Additional or new information is gathered by the county department determined to have jurisdiction.
  2. The additional or new information shall relate to the safety of the child.
  3. The information and justification for any change shall be documented in the referral notes.
- D. If an immediate response is necessary, the county department where the child is located at the time of the referral is the responsible county department while jurisdiction is determined.

#### **7.103.2 RECEIPT OF REFERRAL ALLEGING INSTITUTIONAL ABUSE AND/OR NEGLECT – INFORMATION TO BE GATHERED**

Upon the receipt of a referral alleging institutional abuse and/or neglect, the county department shall gather as much of the following information, as available:

- A. Reporting party's name, address, telephone number, e-mail, facsimile, role, and relationship to alleged victim child(ren) and family;
- B. Alleged victim child(ren)'s name, address, current specific location, school (if applicable), birth date(s), and extent of injuries;
- C. The presenting problems and specific allegations of the abuse and/or neglect;
- D. Name, address, and present location of the person(s) alleged to be responsible for the abuse and/or neglect. If the person(s) is a staff person(s), determine if the person(s) is still on duty or off duty. If the person(s) is another resident, determine where he/she is at the time this information is obtained;
- E. Any indication that other children in the institution are or have been injured, abused, and/or neglected, and if so, their names addresses and current location;
- F. Time, date, location and witness(es) of the incident;
- G. Any other information which might be helpful in establishing the cause of the injury, abuse and/or neglect;
- H. Name, address, and contact information of the parent(s)/guardian(s) of the alleged victim child(ren);
- I. Name, address and telephone number of the institution and whether there is an after-hours telephone number for the institution;

- J. Name and address of the agency holding legal custody of the alleged victim child(ren);
- K. Historical and current information regarding the alleged victim child(ren), the facility and the person(s) alleged to be responsible for the abuse and/or neglect.
- L. Whether the institution has been apprised of the allegation and if so, the action(s) that have been taken by the institution, such as:
  - 1. Notification of the custodial county/agency.
  - 2. Notification of the parent(s)/guardians.
  - 3. Separation of the alleged victim child(ren) from the person(s) alleged to be responsible for the abuse and/or neglect.
  - 4. Provision of medical treatment, and if no medical treatment has been provided whether in the reporter's opinion, an injury was sustained which would constitute a medical emergency.

#### **7.103.21 Jurisdiction for Referrals Concerning Institutional Abuse and/or Neglect**

The county department with jurisdiction for responding to a referral concerning institutional abuse is the department for the county in which the facility named in the referral is located.

#### **7.103.3 INITIAL REVIEW**

When available, the county department shall gather the information in Section 7.103.1, A and/or B, and conduct an initial review. The initial review shall decide the appropriateness of immediate assessment and/or RED Team review. It shall include, but not be limited to, the following actions:

- A. Review the state automated case management system and any available county department files for:
  - 1. Prior referrals and/or involvement with the alleged victim child(ren), family, and person(s) alleged to be responsible for the abuse and/or neglect;
  - 2. Actions taken; and,
  - 3. Services provided to inform whether there is known or suspected abuse and/or neglect or serious threats of harm to a child.
- B. As available and appropriate obtains information from collateral sources such as schools, medical personnel, law enforcement agencies, or other care providers.

#### **7.103.4 RED TEAMS**

- A. County departments shall develop and implement a process utilizing the RED Team framework to review referrals and determine response times. This process shall specify the types of referrals to be reviewed, and be submitted to and approved by the State Department.
- B. The RED Team framework shall include, but not be limited to:
  - 1. Danger/harm;
  - 2. Complicating/risk factors;
  - 3. Gray area;
  - 4. Cultural considerations/race;

5. Safety;
6. Strengths/protective factors; and
7. Next steps.

C. All RED Team decisions shall be approved by a supervisor by the end of the calendar day and documented in the state automated case management system by the end of the next business day.

#### **7.103.5 REFERRALS REQUIRING NO FURTHER ACTION**

- A. County departments may determine that a referral does not require further action and screen it out for the following reasons:
1. The current allegations have previously been assessed;
  2. The alleged victim child(ren) are not located or reside in the State of Colorado. In this circumstance, the county department shall inform the other state or county department of the referral;
  3. Referral does not meet criteria of abuse and/or neglect as defined in statutes and regulations;
  4. Referral lacks sufficient information to locate the alleged victim child(ren);
  5. Referral is duplicative of a previous referral. In this circumstance, the county department shall associate the duplicate referral with the previous referral in the state automated case management system);
  6. The person alleged to be responsible for the abuse and/or neglect is a third (3rd) party and ten (10) years of age or older. In this circumstance, the county department shall send the referral to the appropriate law enforcement agency;
  7. There is no current allegation of abuse and/or neglect; and,
  8. Other (applicable for Program Area 4 only and requires documentation explanation in the state automated case management system).

#### **7.103.6 CRITERIA FOR ASSIGNING A REFERRAL FOR ASSESSMENT**

- A. County departments shall assign a referral for assessment if it:
1. Contains specific allegations of known or suspected abuse and/or neglect as defined in Section 7.000.2;
  2. Provides sufficient information to locate the alleged victim; and,
  3. Identifies a victim under the age of eighteen (18).
- B. Any time a case is opened, it shall come through the referral or assessment process in the state automated case management system with the exception of Interstate Compact on the Placement of Children (ICPC), out of state subsidized adoption, out of state Medicaid, or Division of Youth Corrections (DYC) Medicaid-only.

#### **7.103.61 RESPONSE TIME FOR REFERRALS ASSIGNED FOR ASSESSMENT**

- A. County departments shall assign the appropriate response time for assessments based upon the date the referral is received using the following criteria:

1. An immediate and/or same day response is required when a referral indicates that:
    - a. There may be present danger of moderate to severe harm; or,
    - b. The child's vulnerability and/or factors such as drug and alcohol abuse, violence, isolation, or risk of flight from one county to another county or state increase the need for immediate response.
  2. A three (3) calendar day response is required when a referral indicates that:
    - a. There may be impending danger of moderate to severe harm; or,
    - b. The alleged victim child(ren)'s vulnerability and/or factors such as drug and alcohol abuse, violence, isolation, or risk of flight from one county to another county or state, increase the need for intervention in the near future.
  3. A five (5) working day response is required when a referral indicates an absence of safety concerns. The five (5) day count excludes the date the referral was received.
- B. The decision of how quickly to initiate an assessment shall be based on specific reported information that is credible and that indicates whether a child may be unsafe or at risk of harm.
- C. If a referral requiring an immediate and/or same day response is received after regular business hours, the time frame for response is immediate and/or up to eight (8) hours.
- D. If the caseworker is unable to locate the alleged victim child(ren) within the assigned response time, reasonable efforts shall continue to locate the child according to the original assigned response time.

#### **7.103.7 DIFFERENTIAL RESPONSE**

- A. County departments interested in participating in Differential Response shall conduct the following:
1. Submit a letter of interest to the State Department;
  2. Form a County Differential Response Implementation Committee;
  3. Attend Differential Response Training and Coaching Sessions as determined by the State Department;
  4. Complete the Readiness Self-Assessment Process;
  5. Demonstrate the ability to meet the State Department's performance expectations on safety and well-being measures; and,
  6. Demonstrate county staff understands how to correctly enter information into the state automated case management system.

Upon successful completion of the above efforts, a county may be selected to participate in Differential Response by the Executive Director of the State Department.

- B. County departments that implement Differential Response shall utilize the RED Team framework to review referrals, determine response times, and determine the appropriate track assignment in accordance with the approved RED Team process.
1. High Risk Assessment (HRA) is mandatory for referrals alleging a child fatality, near fatality, and egregious incident of abuse and/or neglect, institutional abuse, and intrafamilial sexual abuse. RED Teams may use discretion to assign a High Risk Assessment (HRA) based on the following factors:

present danger, high level of risk, multiple previous referrals, and/or presenting case characteristics such as type of alleged maltreatment paired with high vulnerability of the alleged victim.

2. The Family Assessment Response (FAR) is for referrals with low to moderate risk. RED teams may use discretion to assign the Family Assessment Response (FAR) in referrals with high risk.
3. All RED Team decisions shall be approved by a supervisor by the end of the calendar day and documented in the state automated case management system by the end of the next business day.

#### **7.103.8 DUTIES TO REPORTING PARTIES – INFORMATION TO BE PROVIDED**

- A. Within thirty (30) calendar days of receiving a referral alleging abuse and/or neglect from a mandatory reporter listed in Section 19-1-307(2)(e.5)(I), C.R.S., the county department shall notify such individual when:
  1. The county department is aware the individual is and continues to be officially and professionally involved in the ongoing care of the child who was the subject of the referral; and,
  2. The mandatory reporter has a need to know in order to fulfill his or her professional and official role in maintaining the child's safety.
- B. The county department shall notify the mandatory reporter of the following information:
  1. The name of the child and the date of the referral;
  2. Whether the referral was accepted for assessment;
  3. Whether the referral was closed without services;
  4. Whether the assessment resulted in services related to the safety of the child;
  5. The name of and contact information for the county caseworker responsible for the assessment; and,
  6. Notice that the reporting mandatory reporter may request updated information within ninety (90) calendar days after the county department received the referral and information concerning the procedure for obtaining updated information.

#### **7.103.9 DOCUMENTATION REQUIREMENTS – WHEN SUPERVISOR APPROVAL IS REQUIRED**

- A. All referrals including the information gathered pursuant to Section 7.103.1, A and B, shall be entered into the state automated case management system within twenty-four (24) hours of receipt.
- B. The initial review shall be documented in the state automated case management system within twenty-four (24) hours of receipt of the referral. The supervisor is to ensure that the review and the documentation have occurred.
- C. The decision to screen out a referral for further action shall be documented in the state automated case management system by the end of the following business day that the decision is made. This shall include an explanation of the reasons why no further action was needed. The determination to screen out a referral for further action must be approved by a supervisor.
- D. All RED Team decisions shall be approved by a supervisor by the end of the calendar day and documented in the state automated case management system by the end of the next business day.

#### **7.104 ASSESSEMENTS OF INTRAFAMILIAL, INSTITUTIONAL, AND THIRD-PARTY ABUSE AND/OR NEGLECT REFERRALS**

- A. The assessment shall begin with face-to-face contact with the alleged victim child(ren) and includes, but is not limited to:
1. Face-to-face contact with the primary caregiver;
  2. Assessing for safety and taking action to secure safety, if indicated;
  3. Assessing risk, needs, and strengths of child(ren) and families; and,
  4. Obtaining culturally relevant and appropriate resources for the alleged victim child(ren) and their families.
- B. At the point of first contact with the alleged victim child(ren), the assessment shall focus immediately on whether the child is safe.
1. To assess for safety, county departments shall consider:
    - a. The safety threshold criteria current or impending danger of moderate to severe harm;
    - b. The ten (10) current or impending dangers;
    - c. Child/youth vulnerabilities/strengths;
    - d. Caregiver strengths/protective capacities; and,
    - e. Actions that respond to the current or impending danger.
  2. If the child is unsafe, the caseworker shall analyze whether a safety plan can reasonably be expected to control current or impending danger while the assessment continues, and if so, develop a safety plan as described in Section 7.107.16. If a safety plan cannot reasonably be expected to control current or impending danger the caseworker shall, if necessary, initiate an out-of-home placement. Section 19-3-401, C.R.S., describes the process of taking children into custody.
  3. For county departments implementing Differential Response, in the first thirty (30) calendar days of a Family Assessment Response (FAR), upon supervisory approval, the caseworker may change tracks to a High Risk Assessment (HRA) to assess, attain or maintain child safety due to lack of cooperation or additional information gathered during the assessment, or if requested to do so by the person(s) alleged to be responsible for the abuse and/or neglect.
  4. For county departments implementing Differential Response, if at any point the safety cannot be sustained in a Family Assessment Response (FAR), the caseworker, with approval from the supervisor, shall open a case and/or request court orders. If at any point new information is gathered that contains information defined in Section 7.202.4, G, a new referral shall be generated.
- C. Safety interventions shall be used continuously throughout all assessments. Safety interventions are defined as the actions and decisions required to:
1. Identify and assess threats to child safety;
  2. Plan for an unsafe child(ren) to be protected;
  3. Facilitate caregivers in taking responsibility for child protection; and,
  4. Manage plans designed to assure child safety while a safe and permanent home is established.
- D. When determining jurisdiction within open assessments, when there are safety concerns, consider the following:



1. The timeframes and completion of activities within the assessment including response time, completion of the safety and risk assessment, and the assessment closure;
  2. Verification of the new residence and documentation of efforts to determine correct jurisdiction;
  3. Considerations of distance between reported residence and new residence; and,
  4. Assessment completion and the need for further services.
- E. When determining jurisdiction within open assessments, when no further safety concerns are identified, the county with the open assessment shall complete the assessment.

#### **7.104.1 INTRAFAMILIAL ABUSE AND/OR NEGLECT ASSESSMENT – TIMING AND ELEMENTS**

- A. The assessment shall begin as soon as reasonably possible following receipt of the referral according to the assigned response time.
- B. The assessment shall be conducted as set forth in Section 19-3-308(2), (3), (4) through 19-3-308.5, C.R.S., and the following:
1. The assessment shall include an interview, with or observation of the alleged victim child(ren) within the assigned response timeframe, according to the following procedures:
    - a. Interviews shall be face-to-face with the child if the child has the verbal ability to relate information relevant to safety decisions. If the child does not have such verbal ability, observation of the child is sufficient.
    - b. Interviews shall be conducted out of the presence of the person(s) alleged to be responsible for the abuse and/or neglect.
    - c. The requirements of section (B) above do not apply in a Family Assessment Response (FAR) where the initial interview may be conducted with the entire family, when doing so does not compromise the safety of the child(ren). Children may be interviewed outside the presence of the suspected person(s) responsible for the abuse and/or neglect at any point during the assessment. If domestic violence is alleged, the non-offending parent victim and alleged victim child(ren) shall be interviewed separate and apart from the alleged perpetrator.
    - d. Information obtained from the interview with the non-offending parent and victim child(ren) shall not be revealed to the alleged perpetrator of domestic violence.
    - e. If the interview or observation cannot be accomplished within the assigned response timeframe, reasonable efforts to interview or observe the child(ren) shall continuously be made. These efforts shall continue until the interview or observation occurs or the assessment is completed.
  2. The assessment shall include interviews with all children, caregivers, non-custodial parent(s), family members, and other persons identified through the assessment who may have information regarding the alleged abuse and/or neglect to determine:
    - a. Extent of child maltreatment, to include, but not limited to:
      - 1) Impact to the child;
      - 2) Type and severity of injuries, if applicable; and
      - 3) Child's explanation of the maltreatment.
    - b. Circumstances surrounding the child maltreatment, to include, but not limited to:

- 1) Caretaker explanation of the maltreatment;
  - 2) Environmental influences; and,
  - 3) Contributory factors.
- c. Child functioning on a daily basis;
- d. Adults and caregiver functioning on a daily basis; and,
- e. Parenting practices and disciplinary practices.
3. The assessment shall include visiting the alleged victim child(ren)'s place of residence or place of custody if:
  - a. The home conditions are the subject of the referral; or,
  - b. Information obtained in the interview process indicates assessment of the home environment is necessary due to safety issues or to determine findings.
4. The assessment shall determine the names and conditions of any children living in the same place as the alleged victim child(ren).
5. The assessment shall include consideration of race/ethnicity, religion, accepted work-related practices of agricultural communities, and accepted child-rearing practices of the culture in which the alleged victim child(ren) participates.
6. The assessment shall include a review of any current and/or prior involvement by any county department with any of the children in the home, the parents, the person alleged to be responsible for the abuse and/or neglect or any person residing in the home. This review shall:
  - a. Analyze each prior involvement for actions taken and services provided;
  - b. Determine whether there is a pattern of behavior in the family that is a threat to the safety of the child(ren) and take action to secure safety, if indicated, or seek more information to make a determination; and,
  - c. Include a review by the supervisor to ensure the review has occurred.
7. The assessment shall include making reasonable efforts to interview and advise the person(s) alleged to be responsible for the abuse and/or neglect of the referral and afford such person(s) an opportunity to respond to the allegations.
8. The assessment shall include use of the Colorado Safety Assessment tool as describe in Section 7.107.1.
9. The assessment shall include use of the Colorado Family Risk Assessment tool as described in Section 7.107.2.
10. The assessment shall include making reasonable efforts to prevent out-of-home placement, unless an emergency exists, and to maintain the family unit. Reasonable efforts include, but are not limited to:
  - a. Engaging family and extended family in safety planning as described in Section 7.107.16, if appropriate;
  - b. Providing in-home services, if appropriate and available;

- c. Removing the person(s) alleged to be responsible for the abuse and/or neglect from the home rather than the child(ren), if possible;
- d. Requesting the caregiver place the child and self in a safe environment; or,
- e. Engaging family and extended family in securing a kinship placement.

#### **7.104.11 Additional Requirements When Assessing Allegations of Sexual Abuse**

- A. When the assessment involves allegations of sexual abuse, the assessment shall include at a minimum in-state and out-of-state sex offender checks of the person(s) alleged to be responsible for the abuse and/or neglect. The sex offender check shall be conducted using the following:
  - 1. County departments shall use Colorado Courts to check if a person alleged to be responsible for the abuse and/or neglect is a sex offender; or,
  - 2. County departments shall use both the state and national websites to check if a person alleged to be responsible for the abuse and/or neglect is a sex offender; and/or,
  - 3. County departments may check with law enforcement to check if a person alleged to be responsible for the abuse and/or neglect is a sex offender.
- B. When conducting any website checks, county departments shall:
  - 1. Use due diligence in following specific check criteria for each website; and,
  - 2. Check for adult felony, misdemeanor, and/or juvenile adjudication records with a sexual offense.
- C. County departments shall also:
  - 1. Access or attempt to access government issued (tamper-resistive) photographic identification of the person alleged to be responsible for the abuse and/or neglect and document the full name(s), including nicknames and/or aliases, address(es) and date(s) of birth in the state automated case management system;
  - 2. Access or attempt to access information from the person alleged to be responsible for the abuse and/or neglect on any possible involvement with law enforcement, probation, parole, corrections, community corrections, and/or child welfare services in Colorado, in any other state, and/or jurisdiction that may include federal, military, tribe, and/or country;
  - 3. Immediately report any possible violations of sex offender registration to local law enforcement; and,
  - 4. Report all law enforcement verified matches of sex offenders to the individual, supervising officer/agent or team responsible for community supervision and public safety.

#### **7.104.12 Audio or Video Recording of the Interview or Observation**

- A. The interview or observation may be audio or video taped except when it is impracticable under the circumstances or will result in trauma to the child, as determined by the county department.
- B. If audio or video recording is conducted, the following standards shall be followed:
  - 1. The interview shall be conducted by a competent interviewer, and may occur at a child advocacy center, as defined in section 19-1-103(19.5), C.R.S., that has a Memorandum of Understanding with the county department responsible for the assessment or by a competent interviewer for the county department.

2. The child shall be advised that audio or video taping of the interview is to be conducted and the advisement shall be documented in the state automated case management system. If the child objects to videotaping of the assessment, such taping shall not be conducted by the county department.
3. If it is the county department's policy to routinely video or audio tape interviews, and an exception is made, the reason for the exception shall be documented in the state automated case management system.
4. If there is a request by any party to the action to view or listen to an audio or video tape, the child and/or the guardian ad litem shall be notified in advance of the request, when possible.
5. Access to these audio or video tapes shall be subject to the rules of discovery and governed by the confidentiality provisions under Section 7.605.

#### **7.104.13 Conclusion of Assessment – Timing, Findings, Services**

##### **7.104.131 Timing**

- A. High Risk Assessments (HRA) or Traditional Response Assessment shall be completed within thirty (30) calendar days of the date the referral was received, unless an extension is requested and approved by the supervisor because circumstances have prevented the assessment from being completed.
  1. Requests for an extension must be made prior to the 30<sup>th</sup> calendar day from the date the referral was received and shall state the primary reason(s) for the extension.
  2. A supervisor shall review the request for an extension and, if approved, shall extend the assessment for no more than thirty (30) days. The decision to approve the extension shall be documented in the state automated case management system within seven (7) calendar days from the date of request. In any event, the assessment shall be reviewed by the supervisor and closed no later than sixty (60) days after the receipt of the referral.
- B. The initial assessment phase of a Family Assessment Response (FAR) shall be approved by the supervisor and closed within sixty (60) calendar days from the date the referral was received.

Once services are identified or the assessment has reached sixty (60) calendar days, the Family Assessment Response (FAR) is considered to be in the service phase, and a FAR service plan shall have been completed in collaboration with the family that identifies the agreed upon services, the steps to be accomplished in accessing services, by what party, and time frames for implementation.

##### **7.104.132 Findings and Services**

- A. County departments shall enter a finding of founded, inconclusive or unfounded, as an outcome of all high risk or traditional assessments in the state automated case management system no later than thirty (30) days after receipt of the referral, or sixty (60) days after the receipt of the referral if a supervisor approves an extension.
- B. County departments may elect to defer entering a founded finding pursuant to Section 19-3-309.5, C.R.S. If the county department elects to defer entering a finding of founded abuse and/or neglect, the county shall enter into a pre-confirmation agreement known as a safety plan agreement, as authorized pursuant to Section 19-3-309.5, C.R.S, and follow the procedures described in Section 7.108.
- C. A finding of “founded” may be made irrespective of whether a person alleged for the abuse and/or neglect was identified. In these circumstances, the person alleged for the abuse and/or neglect is labeled “unknown” in the state automated case management system.
- D. In a Family Assessment Response (FAR), no finding shall be made.

- E. Prior to closing an assessment, county departments shall refer all victim child(ren) under the age of five (5) to the appropriate state or local agency for developmental screening when the county department makes a finding of founded abuse and/or neglect.
- F. County departments may refer any child under the age of five (5) to the appropriate state or local agency for developmental screening in a Family Assessment Response (FAR) or Traditional Response Assessment, if a parent consents and the child presents with needs that might benefit from a developmental screening as determined by the county department.

#### **7.104.14 Documentation Required During Assessment**

- A. At the time of a new assessment, county departments shall document that a review related to prior involvement as set forth in Section 7.104.1, B, 6, has occurred. This shall be documented in the assessment closure section of the state automated case management system.
- B. In assessments involving allegation of sexual abuse, the results of any website or sex offender registry check, and attempts to access other information as set forth in Section 7.104.11 shall be documented in the state automated case management system.
- C. In assessments, the full name(s), including nicknames and/or aliases, address(es), and date(s) birth of the person(s) alleged to be responsible for the abuse and/or neglect shall be documented in the state automated case management system.
- D. All interactions with the family, including efforts to engage the family and extended family, as part of the assessment shall be documented in the state automated case management system. Any specific evidence gathered, such as electronic media, photographs or videotapes shall be filed in the case record and referenced in the state automated case management system.
- E. When an interview or observation of the alleged victim child(ren) is video or audio taped, the required advisement of the child shall be documented.
- F. If it is the county department's policy to routinely video or audio tape interviews, and an exception is made, the reason for the exception shall be noted in the state automated case management system.
- G. The responses to the Colorado Safety Assessment Tool shall be documented in the state automated case management system and shall identify any safety concerns that are or were present during the assessment. Documentation is required within thirty (30) calendar days from the date the referral was received.
- H. If a Family Assessment Response (FAR) is changed to a High Risk Assessment (HRA), the change shall be made in the state automated case management system and all information entered to date will be transferred.
- I. Any reasonable efforts to prevent out-of-home placement shall be documented in the state automated case management system.

#### **7.104.141 Documentation Required at Conclusion of Assessment**

- A. County departments shall document the completed assessment in the state automated case management system, including completion of the assessment closure summary template, and supervisors shall approve the closure of the assessment. The assessment closure shall include the following:
  - 1. Brief summary of initial concerns and additional concerns uncovered during the assessment;
  - 2. Worker reflection of the history of state and county department records, criminal, Colorado courts, sex offender registries and how the history relates to the current assessment;
  - 3. The concerns identified, the actions that were taken, or protective factors that exist which mitigate the harm, danger or risk;

4. Efforts to engage the family and extended family;
  5. For High Risk Assessments (HRA), or traditional response assessments, the facts that support the findings; and,
  6. Family and/or agency plan, if applicable.
- B. In a HRA or traditional response assessment, county departments shall enter the findings of abuse and/or neglect in the state automated case management system even if there is a criminal or civil proceeding pending against the person found responsible for the abuse and/or neglect arising out of the same incident. The reported data shall include the following:
1. The name, address, gender, date of birth, and race of the victim child(ren);
  2. The composition of the victim child(ren)'s immediate family;
  3. At a minimum, the name and last known mailing address of the person found to be responsible for the abuse and/or neglect, the date of birth, and Social Security Number, if known;
  4. The type of abuse and/or neglect;
  5. The severity level of the abuse and/or neglect;
  6. Any previous incidents of abuse and/or neglect of the victim child(ren) or siblings;
  7. The name(s) and address(es) of any person(s) previously found responsible for abuse and/or neglect, if known;
  8. The name of the source of the referral submitted to the county department, if known;
  9. The county department that conducted the assessment of the referral; and,
  10. The date the referral was made and the date the county department made the finding of founded abuse and/or neglect.

#### **7.104.15 Notice**

- A. Notice of the outcome of an assessment shall be made as described below. Unless otherwise described below or authorized by law, no other entity shall receive notification.
- B. Regardless of the outcome of the assessment and as allowable by law, county departments shall notify:
1. The parent(s), guardian(s), custodian(s), or caregiver(s) of the alleged victim child(ren) of the outcome of the assessments. Non-custodial parent(s) shall also be notified of the outcomes of the assessments unless is not in the best interests of the child(ren);
  2. The person alleged to be responsible for the abuse and/or neglect of the outcome of the assessment;
  3. The specified mandatory reporting party, identified in Section 7.103.8, B, of the name of the child and the date of the referral; whether the referral was accepted for assessment; whether the referral was closed without services; whether the assessment resulted in services related to the safety of the child; the name of and contact information for the county caseworker responsible for the assessment; and the county procedure for requesting updated information within ninety (90) calendar days after the county department received the referral; and,
  4. Where applicable, the local licensing unit, the director or administrator of the facility, the agency with licensing or certifying authority and the State Department Division of Child Welfare and Division of Early Care and Learning, if the abuse and/or neglect assessment involved a state-

licensed or county-certified facility. The referral and assessment may be used for investigations and licensing action where the referral involves a licensed child care provider as defined in the Child Care Licensing Act, Section 26-6-101, C.R.S., et seq.

- C. When the assessment results in a finding of founded abuse and/or neglect, county departments shall provide additional notice as described below:
1. County departments shall notify the local law enforcement agency and the District Attorney's Office of a founded report.
  2. County departments shall notify the person found responsible for child abuse and/or neglect of the finding by first-class mail to the responsible person's last known mailing address, using a form approved by the State Department. County departments shall retain a copy of the notice in the case file showing the date of mailing. The notice shall include the following information:
    - a. The type and severity level of the abuse and/or neglect, the date the referral was made to the county department, which county department completed the assessment, the date the county department made the finding in the state automated case management system, and information concerning persons or agencies that have access to the information.
    - b. The circumstances under which information contained in the state automated case management system will be provided to other individuals or agencies.
    - c. How to access the county's dispute resolution process. County departments are authorized to offer a county dispute resolution process to persons alleged to be responsible for abuse and/or neglect.
    - d. The right of the person found to be responsible for abuse and/or neglects to request a state level appeal as set forth in Sections 7.111 through 7.113. The county department shall provide the State Department approved appeal form to the person found to be responsible for abuse and/or neglect.
    - e. Notice that the scope of the appeal is limited to challenges that the finding(s) are not supported by a preponderance of the evidence or that the actions found to be abuse and/or neglect do not meet the legal definitions of abuse and/or neglect. The State Department will be responsible for defending the determination at the state level fair hearing.
    - f. A full explanation of all alternatives and deadlines contained in Sections 7.111 through 7.113.

#### **7.104.2 INSTITUTIONAL ABUSE AND/OR NEGLECT - GROUNDS FOR ASSESSMENT**

This section addresses assessments of referrals alleging institutional abuse and/or neglect as defined in Section 7.000.2 except that a referral of a minor injury resulting from physical restraint shall not, by itself, require a full assessment unless there are surrounding circumstances that would indicate abusive and/or neglectful behavior by the care provider. Such circumstances include those referrals in which someone is specifically alleging the behavior to be abusive and/or neglectful and there has been a pattern of frequent injuries by the same caregiver and/or staff or of similar incidents in the same facility.

##### **7.104.21 Agency Responsible for Conducting Institutional Abuse and/or Neglect Assessment**

- A. The county department in which the facility named in the referral is located shall conduct the assessment. The assessment shall follow the institutional abuse and/or neglect protocol described in Section 7.104.22.
- B. The assessment shall be conducted by a qualified and neutral party in those situations in which the county department is the supervisory agency, such as for certified county foster and group homes. Such an assessment shall be arranged for by the responsible county department with either another county department, another agency within the community who accepts delegated responsibility, or a disinterested and qualified staff person within the county department.

#### **7.104.22 Institutional Abuse and/or Neglect Assessment – Timing and Requirements**

- A. The county department conducting the assessment shall assign priority in response time using the criteria set forth in Section 7.103.61.
- B. The assessment shall include the following actions:
  - 1. A face-to-face interview with the alleged victim child(ren) according to procedures for interviewing children described in Section 7.104.1 and the following:
    - a. The alleged victim child(ren) shall be interviewed in a setting which is as neutral as possible and where confidentiality can be maintained;
    - b. The alleged victim child(ren) shall not be taken off the grounds for the interview unless the county department has court ordered custody or law enforcement has taken the child into protective custody;
    - c. The person(s) alleged to be responsible for the abuse and/or neglect and other related parties (i.e., foster parents, spouse or other facility staff) shall not be allowed to be present during the interview with the alleged victim child(ren); and,
    - d. The county department shall, if necessary, obtain a court order to access the alleged victim child(ren) if the facility refuses access.
  - 2. The assessment shall determine if there are other victim child(ren) not named in the referral and immediately assess the safety of those individuals.
  - 3. The assessment shall obtain the names and addresses of any other alleged victim child(ren) who may no longer be in the facility and interview those individuals, if appropriate.
  - 4. The assessment shall include interviews of witnesses, including children and staff who may have additional information.
  - 5. The assessment shall include an interview of the person(s) alleged to be responsible for the abuse and/or neglect.
  - 6. The assessment shall include obtaining a detailed description of the incident and of the injuries and an assessment of the appropriateness of physical management or restraint if this was involved.

#### **7.104.23 Documentation – Report Required**

- A. A written report of the assessment documented in the state automated case management system shall be prepared by the county department that conducted the assessment within sixty (60) calendar days after receipt of the referral.
- B. A report shall be provided as described below:
  - 1. A written report shall be provided to the facility administrator/director.
  - 2. A written report shall be provided to the agency with licensing/certifying authority.
  - 3. The Institutional Abuse Review Team, Early Childhood and Learning Division, and the State Department's Twenty-Four (24) Hour Monitoring Team, when the incident involves a twenty-four (24) hour care facility shall be provided a report through the state automated case management system.
  - 4. The same custodial counties as required in Section 7.104.24 shall be provided a report through the state automated case management system.



C. The report shall include, at a minimum, the following information:

1. Name(s) of person(s) alleged to be responsible for the abuse and/or neglect;
2. The name(s), age(s), and duration of the alleged victim child(ren)'s placement in the facility being assessed;
3. The name of the facility and the county in which it is located;
4. The name of director/administrator of the facility;
5. The approximate number of children served by the facility;
6. The age range of children served by the facility and type of children served (e.g., child with developmental disabilities);
7. A summary of activities involved in the assessment, including a list of the individuals interviewed;
8. A summary of findings or conclusions, including the information on which the findings or conclusions are based; and,
9. A summary of the recommendations and/or need for an identified corrective or remedial action.

**7.104.24 Notice**

A. The following individuals shall receive notice:

1. The licensing authority or certifying unit shall be notified that a referral concerning abuse and/or neglect has been received within one (1) working day after receipt of the referral.
2. The licensing authority or certifying unit shall be notified if the assessment indicates there is an immediate threat to the child(ren)'s health, safety, or welfare within one (1) working day of such determination.
3. Custodial agencies, including county departments, other states, and appropriate divisions of the State Department shall be notified as follows:
  - a. Immediately, if there are safety issues or if an injury requires medical treatment; and,
  - b. Following completion of the assessment, if a child in their custody was the subject of a referral or if the assessment reveals concerns regarding the child care practices which could negatively impact the child(ren).
4. Parents or legal guardians of alleged child(ren) victim(s) shall be notified as follows:
  - a. By the custodial counties when alleged abuse and/or neglect occurs in out-of-home care setting;
  - b. By the assessing county when there is no custodial county;
  - c. By the assessing county when alleged abuse and/or neglect occurs in less than twenty-four (24) hour child care with notification provided prior to an interview with child(ren), when possible;
  - d. When an assessment is being or has been conducted on a referral of abuse and/or neglect; and shall include the nature of the alleged abuse and/or neglect and the findings of the assessment; and,

- e. If circumstances do not allow for direct contact, then notification of the allegations of abuse and/or neglect and findings shall be provided in writing.
5. Parents or legal guardians of uninvolved children in less than twenty-four (24) hour licensed child care settings shall be given notice of an assessment within seventy-two (72) hours when it has been determined by the State Department or county department that:
- a. The incident of alleged child abuse and/or neglect that prompted the assessment is at the level of a moderate, severe, or fatal incident of abuse and/or neglect, or involves sexual abuse;
  - b. Notice to the parents or legal guardians of the uninvolved children is essential to the assessment of the specific allegation of abuse and/or neglect or is necessary for the safety of children cared for at the facility; and
  - c. A determination has been made and a state or county department supervisor has provided written approval of the determination for which basis and approval may be in electronic form.
6. The director of the facility shall be:
- a. Apprised of the allegation of abuse and/or neglect; and,
  - b. Advised regarding the results of the assessment and provided a verbal report immediately once a determination is made. If the county department is unable to make a determination regarding the person(s) alleged to be responsible for abuse and/or neglect, the director shall also be advised so that decisions regarding the continued employment of the employee can be made by the facility.

### **7.104.3 THIRD-PARTY ABUSE AND/OR NEGLECT – GROUNDS FOR ASSESSMENT**

This section addresses assessments of referrals alleging abuse and/or neglect by a third-party, as defined in Section 7.000.2, who is not related to the alleged victim child(ren) in the contexts described in the previous sections addressing intrafamilial and institutional abuse and/or neglect.

#### **7.104.31 Third-Party Abuse and/or Neglect Assessment – Timing and Requirements**

- A. When the referral alleges abuse and/or neglect by a third-party ten (10) years of age or older, the county department shall immediately forward the referral to the appropriate law enforcement agency for screening and investigation.
- B. When the referral alleges the abuse and/or neglect by a child under ten (10) years of age, county departments shall be the agency responsible for the assessment. The assessment shall focus on:
  - 1. Whether or not the incident occurred;
  - 2. The entire situation including the actions or omissions of adults who are responsible for care of the children involved; and,
  - 3. Any interventions that may be necessary to secure safety and address treatment needs.
- C. If a county department reasonably believes that the protection and safety of a child is at risk due to an act or omission on the part of the persons responsible for the child's care, the county department shall make a referral concerning intrafamilial abuse and/or neglect.

#### **7.104.32 Documentation – Report from Law Enforcement**

- A. County departments shall attempt to obtain a copy of the report summarizing any investigation that was conducted by law enforcement. If the report is obtained, it shall be the basis upon which the county

department enters a founded finding of abuse and/or neglect into the state automated case management system.

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## **7.106 ADDITIONAL CATEGORIES OF ASSESSMENTS**

### **7.106.1 EGREGIOUS INCIDENTS OF ABUSE AND/OR NEGLECT, NEAR FATALITIES, OR CHILD FATALITIES**

The requirements of this section address assessments of referrals of abuse and/or neglect involving any of the following circumstances:

- A. Where significant violence, torture, use of cruel restraints, or other similar, aggravated circumstance is present;
- B. A child has died; or,
- C. A physician has determined that a child is in serious, critical, or life-threatening condition as a result of sickness or injury caused by suspected abuse and/or neglect.

#### **7.106.11 Assessment Procedures – Timing and Requirements**

- A. County departments shall conduct a High Risk Assessment (HRA), or traditional response assessment of egregious incidents of abuse and/or neglect, a near fatality, or a child fatality in intrafamilial and institutional settings in those cases in which:
  - 1. There is reason to know or suspect that abuse and/or neglect caused or contributed to the incident; or,
  - 2. The cause of the incident is unknown or the information given is not consistent with the degree or type of injury and/or subsequent death.
- B. County departments shall:
  - 1. Coordinate with the following agencies to ensure prompt notification of an incident of egregious abuse and/or neglect, near fatality, or fatality of a child, which is suspicious for abuse and/or neglect:
    - a. Law enforcement;
    - b. District attorney's office;
    - c. Coroner's office; and,
    - d. Hospitals.
  - 2. Coordinate the assessment with law enforcement. At a minimum in cases in which there are no surviving children, county departments shall provide law enforcement and the coroner with information related to any prior involvement with the child, the family, or the person alleged to be responsible for the abuse and/or neglect.
  - 3. Assess the condition of any surviving child(ren) and take action necessary to ensure their protection by:
    - a. Visiting the child(ren)'s home or place of custody;
    - b. Interviewing and/or observing the child(ren);
    - c. Examining the child(ren) to include an assessment of the child(ren)'s overall current physical, mental, or emotional condition;

- d. Assessing the safety of the home environment, to include an interview with the parents, guardians, and/or legal custodians; and,
- e. Seeking an emergency protective order only when there are reasonable grounds to believe that a surviving or non-injured child(ren) is at risk of severe emotional or physical harm in his/her home environment.

**7.106.121 Additional Actions When County Department has had Prior/Current Involvement**

- A. When a county department has custody of the child and/or protective supervision, it shall immediately take the following actions:
  - 1. Notify the parents, guardians, and/or legal custodians of the incident. If the parents, guardians, and/or legal custodians reside in another county or state, the county department shall coordinate with the county department of residence for the parents, guardians, and/or legal custodians to provide personal notification, whenever possible.
  - 2. Notify the director of the county department of the incident. The county director shall also be immediately notified if the department has had prior child welfare involvement within the last three (3) years that was directly related to the egregious incident of abuse and/or neglect, near fatality or fatality to include referrals that have been screened out. A complete copy of the child's case record shall be made available to the director of the county department.
  - 3. Notify the court, the attorney for the county department, and the Guardian-Ad- Litem (when one has been assigned) of the incident involving any child who is under the court's jurisdiction.
- B. Upon notification of an egregious incident of abuse and/or neglect, near fatality or fatality in which the county department has had prior child welfare involvement within the last three (3) years with the child, family, or person alleged to be responsible for abuse and/or neglect, the director of the county department shall take the following actions:
  - 1. Designate an individual(s) who will be responsible for assessing the egregious incident of abuse and/or neglect, near fatality or fatality. The assigned individual(s) shall not have had prior involvement with the family during a referral, assessment, case or other services with the county department. In the event of a conflict of interest, the county department shall arrange for the assessment to be conducted by another county department with personnel having appropriate training and skill.
  - 2. Ensure that the county department conducts a complete internal administrative review of any child welfare involvement in the case prior to the egregious incident of abuse and/or neglect, near fatality or fatality. This review shall be referred to as the county department's internal review and shall be completed whenever the county department has had current or prior involvement with the child, family or person alleged to be responsible for the abuse and/or neglect, within the last three (3) years. The review shall include, at a minimum:
    - a. Assessment of the interventions made by the county department.
    - b. Evaluation of the case plan.
    - c. Identified areas of strengths and/or weaknesses in the casework process.
    - d. Analysis of any systemic issues that may have led to delays or oversights.
    - e. Evaluation of the role played by other community agencies and the overall case coordination.
    - f. Recommendations for staff training or changes in the system that would avoid other similar occurrences.

3. Submit a written report of the county department's internal review within sixty (60) calendar days of the initial notification of the egregious incident of abuse and/or neglect, near fatality or fatality to the State Department.
- C. If another county department also has current and/or prior involvement with the child, family or person alleged to be responsible for the abuse and/or neglect within the three (3) year period of the incident of egregious abuse and/or neglect, near fatality or fatality (including referrals that were screened out), the State Department shall decide whether a county department internal review report will be required.

#### **7.106.13 Reporting to the State**

- A. Within twenty-four (24) hours (excluding weekends and holidays) of a county department becoming aware of an egregious incident of abuse and/or neglect, or near fatality or fatality of any child, which is suspicious for abuse and/or neglect, the county department shall call or email the following known information to the State Department which shall also be documented on the state prescribed form:
1. Name and age of victim;
  2. The referral identification number generated by the state automated case management system;
  3. Known circumstances around the egregious incident of abuse and/or neglect, near fatality or fatality;
  4. A description of physical injuries or medical condition of the child(ren) at the time of receipt of the information;
  5. The names and ages of surviving or non-injured child(ren) who may be at risk;
  6. A brief description of family/caregiver's prior involvement with child welfare, if any;
  7. The actions taken by the county department to date and future actions to be taken;
  8. The involvement of other professionals in the case;
  9. Whether the child was in out-of-home placement at the time of the incident; and,
  10. For fatal incidents, the county shall enter the child's date of death in the state automated case management system.
- B. Upon notification of an egregious incident of abuse and/or neglect, near fatality or fatality, the county department shall take the required steps to restrict access to the state automated case management system to the current assessment of the egregious incident of abuse and/or neglect, near fatality or fatality, and any prior involvement in the state automated case management system regarding this child, the child's family members, and the person(s) suspected of the abuse and/or neglect. Access shall remain restricted until the conclusion of the state child fatality review, at such time the county department shall determine whether the records shall be unrestricted.
- C. The county department shall provide the following information to the State Department within sixty (60) calendar days of the initial notification of the egregious incident of abuse and/or neglect, near fatality or fatality, to the extent possible, and no longer than sixty (60) calendar days without a written request from the county department for an extension and subsequent State Department approval granting an extension:
1. The completed referral/assessment summary in the state automated case management system;
  2. Copies of any pertinent social, medical, and mental health evaluations of all involved subjects (child(ren), family, caregivers, etc.);
  3. Coroner's records, including autopsy report;

4. Police reports of present investigation as well as any prior criminal history of all subjects;
5. A copy of any of the case record not obtainable in the state automated case management system;
6. A written report of the county department internal review;
7. A statement of any human services and Medicaid assistance or services that were being provided to the child and are recorded in the state automated case management system, the Colorado benefits management system, or the Colorado child care automated tracking system, any member of the child's family, or the person alleged to be responsible for the abuse and/or neglect; and,
8. The age, income level, and education of the legal caregiver at the time of the fatality.

**7.106.14 State Review of an Incident of Egregious Abuse or Neglect, Near Fatality or Fatality of a Child**

When a county department becomes aware that an incident of egregious abuse and/or neglect, near fatality or fatality of a child has occurred, which is suspicious for a child abuse and/or neglect, the county department shall submit reports for review by the State Department in accordance with Section 7.106 of this rule, and cooperate with the State Department's review. The State Department shall conduct a multidisciplinary review of such cases, where the county was involved in the three years prior to the incident of egregious abuse and/or neglect, near fatality, or fatality. The State Department Child Fatality Review shall occur within thirty (30) days of the State Department receiving all required and relevant reports and information critical to an effective fatality review.

**7.106.2 MEDICAL NEGLECT OF INFANTS AND TODDLERS WITH DISABILITIES – GROUNDS FOR ASSESSMENT**

The requirements of this section address assessments of referrals of medical neglect involving:

- A. Infants less than one (1) year of age who were born with a life-threatening condition and who may have additional non-lethal physical or mental disabilities; or,
- B. Toddlers under three (3) years of age who have been continuously hospitalized since birth, who were born extremely premature, or who have a long-term disability.

**7.106.21 Agency Responsible for Conducting the Assessment**

- A. The county department responsible for conducting the assessment of a referral of medical neglect shall be the county in which the caregivers of the hospitalized infant reside.
- B. If the caregivers' residence cannot be determined, the county department in which the hospital is located shall be responsible for conducting the assessment.

**7.106.22 Assessment Procedures – Timing and Requirements**

County departments shall:

- A. Work with medical organizations, hospitals, and health care facilities to implement procedures that ensure a timely response and resolution of referrals of medical neglect;
- B. Obtain all relevant medical data concerning the child. County departments shall seek a court order to obtain records if the request for such material is refused;
- C. Coordinate with any existing hospital review committees, which may have evaluated and recommended treatment in the case under assessment;
- D. If, after assessing the medical neglect referral, there are indications that the referral of medical neglect may be founded, the county department shall interview the parent(s); and,

- E. Refer the matter to the local law enforcement agency in cases in which the infant has died before the assessment is completed and the county department has reason to suspect that medically indicated treatment was withheld. The matter shall be referred to the law enforcement agency in the location where the child died. However, if it is determined that treatment was not medically indicated, or that medically-indicated treatment had not been withheld, then the report shall be deemed unfounded.

#### **7.106.23 Medical Decisions Regarding Infants and Toddlers**

- A. County department staff shall make no medical decisions regarding infants and toddlers and shall seek an independent medical consultation when indicated.
- B. If the parent(s) wish to seek a second medical opinion, the county department shall provide referral assistance.
- C. If the county department finds that an independent medical evaluation is necessary to determine the infant or toddler's medical prognosis, the county department shall recommend to the parent(s) that an independent medical evaluation be done.
- D. If the county department determines that medically-indicated treatment or palliative care is being or will be withheld; and:
  - 1. The infant or toddler's condition requires an urgent response, or,
  - 2. Efforts by the county department or hospital personnel to obtain parental consent to treatment would be futile or already have failed, then the matter shall be brought to court under a petition. The petition may include a request to place temporary custody of the child with the county department to ensure proper medical treatment is provided. The county department shall immediately secure a court order if indicated.

#### **7.106.3 ASSESSMENT OF MEDICAL NEGLECT IN WHICH RELIGIOUS CONSIDERATIONS ARE INVOLVED - GROUNDS FOR ASSESSMENT**

County departments shall assess cases of medical neglect including those cases in which there is a failure to provide medical treatment based upon the parent's, guardian's, or custodian's religious beliefs and there is concern that such failure will result in a threat to child's health and welfare.

#### **7.106.31 Assessment Procedures – Timing and Requirements**

The assessment shall be conducted as described below:

- A. The county department shall obtain a medical evaluation if the child's condition presents substantial concern for the child's health and welfare. This evaluation shall be obtained with the consent of the parents, guardians, or legal custodians. If such consent is refused, the county department shall seek a court order to obtain medical evaluation;
- B. The county department shall consult with medical practitioners and consider whether the child's condition is life-threatening or will result in serious disability without professional medical care; and,
- C. If the child's condition is determined to be life-threatening or could result in serious physical impairment or serious disability without professional medical care, the county department shall seek a court order authorizing the provision of the necessary medical care in the event that such care is refused by the parent, guardian, or legal custodian. The county department may, but is not required to, seek temporary custody of the child in order to obtain judicial authorization for treatment.

#### **7.106.32 Spiritual Healing Considerations**

If spiritual healing is involved, the county department shall follow the guidelines defined in Section 19-3-103 (2)(a), (b), C.R.S., to decide whether the method is a "recognized" method of religious healing and whether such healing is considered to be medically effective for the child's condition.



### **7.106.33 Impact of Parental Interference on Findings**

- A. If a parent, guardian, legal custodian, or caregiver inhibits or interferes with the provision of medical evaluation or treatment according to a court order, that act would constitute neglect and in such circumstances a referral shall be made to law enforcement and the county department may file a dependency and neglect petition.
- B. For purposes of entering founded findings of abuse and/or neglect into the state automated case management system, reporting to police for criminal investigation, and filing of dependency and neglect petitions, no child who is under treatment by a recognized method of religious healing shall, for that reason alone, be considered to have been neglected and dependent unless the child's parent, legal guardian, custodian, or caregiver inhibits or interferes with the provision of medical services according to court-ordered medical evaluation or treatment.

### **7.107 INSTRUMENTS, TOOLS, AND INTERVIEW PROCEDURES**

The following instruments, tools, and procedures are intended to assist county departments in making informed and reliable decisions.

#### **7.107.1 COLORADO SAFETY ASSESSMENT TOOL**

There shall be a transition period for completion of training and access to the new Colorado Safety Assessment Tool in the state automated case management system. All county child welfare case carrying staff and supervisors performing High Risk Assessments (HRA) or Traditional Response Assessment shall be trained and have access to the new tool by June 30, 2015. All other child welfare case carrying staff and supervisors shall be trained and have access to the new tool by December 31, 2015.

#### **7.107.11 Parameters for Use of the Colorado Safety Assessment Tool**

- A. Completion of the Colorado Safety Assessment Tool is required:
  - 1. To be completed with the caretaker;
  - 2. As part of an assessment, including assessments of new allegations of abuse and/or neglect in open child welfare services cases;
  - 3. Prior to end-dating a safety plan to determine whether or not the safety concerns still exist, if the safety plan is controlling for safety, and/or if the family is in need of additional services;
  - 4. Whenever there is a significant change in family circumstances or situations that might pose a new or renewed threat to child safety;
  - 5. Prior to reunification;
  - 6. Prior to supervisory approval for closing services; and
  - 7. In all Program Area 5 referrals being assessed, except:
    - a. Institutional abuse assessments, as described in section 7.104.22;
    - b. Fatality assessments when there are no surviving siblings; or,
    - c. When caregivers have abandoned the child.

#### **7.107.12 Safety Threshold**

- A. The following criteria must be present to determine that a present or impending danger exists. Meeting these criteria indicates that the family's behavior, condition or situation threatens the safety of a child.

- A. The threat to child safety is specific and observable.
- B. Conditions reasonably could result in moderate to severe harm to a child.
- C. This harm is likely to occur if not resolved.
- D. A child is vulnerable to the threat of harm due to his/her age, verbal abilities, diagnosed medical conditions, diagnosed mental health conditions, diagnosed developmental delays, diagnosed developmental disabilities, limited physical capacities, and/or professional observation.
- E. The caregiver(s) is unable or unwilling to control conditions and behaviors that threaten child safety.

#### **7.107.13 Standardized Safety Concerns**

- A. The county departments shall assess for child safety using the ten (10) standardized current or impending dangers. The ten standardized current or impending dangers are as follows:
  - 1. Caregiver(s) substance use impacts ability to supervise, protect, and/or care for the child/youth.
  - 2. Caregiver(s) is unwilling or unable to meet the child/youth's immediate needs for food, clothing, and shelter.
  - 3. Caregiver(s) is unwilling or unable to meet the child/youth's significant medical or mental health care needs.
  - 4. Caregiver(s) is unwilling or unable to take protective action in response to child/youth's inflicted or credible threat of moderate to severe harm to self.
  - 5. Intimate partner violence exists in the home and places child in danger of physical and/or emotional harm.
  - 6. The living situation is physically hazardous and/or immediately threatening to the child/youth's health or safety based on the child's age or development.
  - 7. Caregiver(s) does not provide supervision necessary to protect the child/youth, based on the child/youth's age or development.
  - 8. Moderate to severe physical injury caused by the caregiver(s) or adult household member.
  - 9. Child/youth is in present danger of harm due to suspected or confirmed sexual abuse.
  - 10. The caregiver(s) refuses access to the child or there is reason to believe the family will flee based on current concerns.
- B. The list of current or impending danger definitions shall be referenced when assessing threats to child safety and prior to checking current or impending dangers in the Colorado Safety Assessment Tool.

#### **7.107.14 Safety Assessment Conclusion**

- A. If none of the ten (10) current or impending dangers are identified at the conclusion of the safety assessment process, then it is reasonable to conclude that the child is safe and no further safety intervention is required.
- B. If assessment of the child and family determines that the child is safe and emergency out-of-home placement occurred prior to the completion of the safety assessment, efforts should be made to return responsibility for the child's safety back to the caregiver(s).

- C. If assessment of the child and family determines that the child is unsafe, analysis and planning are necessary.
- D. The caregiver strengths and protective capacity shall be assessed using the following criteria to determine whether a caregiver has the capacity and willingness to assure the child's protection and, if so, no further safety intervention is necessary.
  - 1. Caregiver(s) has realistic expectation of the child/youth.
  - 2. Caregiver(s) provides for child/youth's basic needs.
  - 3. There is evidence of a supportive relationship between caregiver and child/youth.
  - 4. Caregiver(s) has demonstrated effective problem solving.
  - 5. Caregiver(s)' explanation is consistent with child/youth's injury or circumstances.
  - 6. Caregiver(s) has supportive relationships with three (3) or more persons.
  - 7. Caregiver(s) has demonstrated use of identified supportive relationships in providing safety and protection for the child/youth.
  - 8. Child/youth has the cognitive, physical, and emotional capacity to actively participate in safety interventions.
  - 9. Caregiver(s) is able and willing to actively participate in creating and carrying out a plan to protect the child/youth.
  - 10. Caregiver(s) is able and willing to use resources necessary to create safety.
  - 11. Caregiver(s) has exhibited the ability to put the child/youth's safety ahead of his/her own needs and wants.
  - 12. Relevant community services or resources are immediately available.
  - 13. Other documented strengths and protective capacities.
  - 14. Other.

#### **7.107.15 Safety Intervention Analysis**

To determine whether an in-home safety plan can sufficiently manage the current or impending dangers, document how the following are met in the state automated case management system:

- A. The home environment is stable enough to support an in-home safety plan;
- B. Caregivers and support persons are able, willing, and available to assist in the development and implementation of an in-home safety plan and adult(s) other than the alleged person responsible for the danger to the child/youth are responsible for the implementation of the plan; and,
- C. Resources are accessible at the level necessary to control all identified danger to the child/youth.

#### **7.107.16 Safety Planning**

- A. A safety plan shall be developed for all children in current or impending danger if an in-home safety plan can reasonably be expected to control for all identified dangers. All children in the household assessed to be in current or impending danger shall be included in one plan.
- B. Safety plans shall include the following:

1. Safety responses that are the least restrictive to ensure safety;
  2. Safety responses that have an immediate impact on controlling for identified current or impending dangers;
  3. Description of actions to be taken that address each specific current or impending danger, including frequency of each action and who is responsible for each action;
  4. Safety response(s) that are readily accessible at the level required to ensure safety;
  5. Identification of each family member and safety management provider participating in the plan;
  6. Parental acknowledgement of current or impending dangers and a willingness to participate in the safety plan; and
  7. Caseworker activities to oversee the safety plan.
- C. Parents, caregivers, and others who are a part of a safety plan shall sign the safety plan and receive a copy and the signatures and paper form shall be retained in the file.
- D. Safety plans do not have to be developed if the safety analysis results in a decision that out-of home placement is the only plan that is sufficient to control for all identified current or impending dangers.

**7.107.17 Documentation**

- A. The responses to the Colorado Safety Assessment Tool shall be documented in the state automated case management system and shall identify any safety concerns that are or were present during the assessment. Documentation is required as soon as possible and no later than (14) calendar days from the date the alleged victim child(ren) was interviewed or observed.
- B. Safety plans shall be documented in the state automated case management system within fourteen (14) calendar days from the date the alleged victim child(ren) was interviewed or observed.

**7.107.2 COLORADO FAMILY RISK ASSESSMENT TOOL**

There shall be a transition period for completion of training and access to the new Colorado Family Risk Assessment Tool in the state automated case management system. All county child welfare case carrying staff and supervisors performing High Risk Assessments (HRA) or Traditional Response Assessment shall be trained and have access to the new tool by June 30, 2015. All other child welfare case carrying staff and supervisors shall be trained and have access to the new tool by December 31, 2015.

**7.107.21 Parameters for Use of the Colorado Family Risk Assessment Tool**

- A. The Colorado Risk Assessment Tool is required:
1. To be completed with the caregiver;
  2. As part of any Program Area 5 assessment, except:
    - a. Institutional assessment;
    - b. Fatality assessment when there are no surviving siblings;
    - c. When caregivers have abandoned the child; and,
    - d. When the assessment determined no basis for the allegations.
  3. Whenever there is a significant change in family circumstances or situations that might pose a new or renewed threat to child safety;

4. Prior to reunification; and,
  5. Prior to supervisory approval for closing services.
- B. The Colorado Risk Assessment Tool shall be used to:
1. Determine risk for future abuse and/or neglect;
  2. Aid in determining if services should be provided; and
  3. Aid in determining the appropriate level of services.

#### **7.107.22 Procedures for Completing the Colorado Family Risk Assessment Tool**

The Colorado Risk Assessment Tool shall be completed with the family, and shall address the following factors:

- A. Current type of allegation;
- B. Previous child welfare assessments, services, and placement;
- C. Number of children in household;
- D. Age of youngest child in household;
- E. Age of primary caregiver;
- F. Primary caregiver's provision of physical care or supervision;
- G. Caregiver(s)' use of alcohol and controlled substances;
- H. Characteristics of children in the household, including mental health, behavioral problems, and physical or developmental disabilities;
- I. Recent or historical domestic violence in the household;
- J. Caregiver(s)' history of homelessness;
- K. Caregiver(s)' history of mental health treatment;
- L. Primary caregiver's history of abuse, neglect and/or placement in protective services; and
- M. Caregiver(s)' involvement in disruptive or volatile adult relationships.

#### **7.107.23 Risk Analysis**

If the risk assessment score is high, the county shall hold a family engagement meeting to discuss next steps with the family.

#### **7.107.24 Timing and Documentation**

- A. The completed Colorado Family Risk Assessment shall be documented in the state automated case management system within thirty (30) calendar days from the date the referral was received.
- B. Family Engagement Meetings shall be documented in the framework in the state automated case management system.
- C. If the county department decides to close the assessment with a high risk score, the county department shall document the reasons for closure.

### **7.107.3 YOUTH SAFETY ASSESSMENT TOOL (Reserved for Future Use)**

#### **7.108 DEFERRAL PROCESS – WHEN PERMITTED**

- A. County departments may follow the deferral process in the following circumstances:
  - 1. When the person has had no previous allegations of abuse and/or neglect assessed;
  - 2. When the abuse and/or neglect that the person is found to be responsible for is at the level of minor incident of abuse and/or neglect, pursuant to Section 7.000.2;
  - 3. When the person found to be responsible for the abuse and/or neglect and the county department decide on a mutually agreeable method for resolving the issues related to the referral; and,
  - 4. When the requirements set forth in the agreement for resolving the issues related to the referral of abuse and/or neglect can be completed within sixty (60) calendar(?) days after the receipt of the referral.
- B. County departments are not obligated to enter into any agreements to defer entering a finding of founded abuse and/or neglect into the state automated case management system.
- C. The agreement shall be in writing and signed by the caseworker and the person found to be responsible for the abuse and/or neglect, and reviewed by the supervisor.
- D. Upon deciding to enter into the deferral process, the county department shall document the decision in the state automated case management system.

#### **7.108.1 DEFERRAL PROCESS COMPLETED**

If the person who is found to be responsible for the abuse and/or neglect completes the agreement, as determined by the county department, the county department shall make an individual finding of "deferred" with an overall finding of founded into the state automated case management system regarding the referral of abuse and/or neglect related to the assessed incident.

#### **7.108.2 DEFERRAL PROCESS NOT COMPLETED**

If the person who is found to be responsible for the abuse and/or neglect does not complete the agreement, as determined by the county department, the county department shall make an entry for the individual and overall finding of "founded" into the state automated case management system regarding abuse and/or neglect related to the assessed incident.

#### **7.109 ENTERING FOUNDED FINDINGS REPORTS OF CHILD ABUSE OR NEGLECT**

In a High Risk Assessment or non-dual track counties, the county department shall enter the founded finding even if there is a criminal or civil proceeding pending against the person responsible arising out of the same incident. The reported data shall include the following:

- A. The name, address, gender, date of birth, and race of the child(ren) victim(s);
- B. The composition of the victim's immediate family;
- C. At a minimum, the name and last known mailing address of the person found to be responsible for the child abuse or neglect, and the date of birth and Social Security Number, if known;
- D. The type of abuse or neglect;
- E. The severity of the abuse or neglect;
- F. Any previous incidents of child abuse or neglect of child or siblings;

- G. The name(s) and address(es) of any person(s) responsible for previously founded abuse or neglect, if known;
- H. The name of the source of the referral submitted to the county department, if known;
- I. The county department that investigated the referral; and,
- J. The date the suspected abuse or neglect referral was made to the county department and the date the county department made a founded finding of the abuse or neglect.

#### **7.110 NOTICE TO LAW ENFORCEMENT AND DISTRICT ATTORNEY**

The county department shall notify the local law enforcement agency and the District Attorney's Office of the founded report. No other entity shall receive notification unless otherwise authorized by law.

#### **7.111 NOTICE TO THE PERSON FOUND TO BE RESPONSIBLE FOR CHILD ABUSE OR NEGLECT**

- A. The county department shall notify the person found responsible for child abuse or neglect of the finding by first-class mail to the responsible person's last known mailing address, using a form approved by the State Department. The county department shall retain a copy of the notice in the case file showing the date of mailing.
- B. At a minimum, the notice shall include the following information:
  - 1. The type and severity level of the abuse or neglect, the date the referral was made to the county department, which county department completed the assessment, the date the county made the finding in the state automated case management system, and information concerning persons or agencies that have access to the information.
  - 2. The circumstances under which information contained in the state automated case management system will be provided to other individuals or agencies.
  - 3. How to access the county's dispute resolution process. Counties are authorized to offer a county dispute resolution process to persons alleged to be responsible for an incident of child abuse or neglect.
  - 4. The right of the person found responsible to request a state level appeal as set forth in Section 7.112. The county shall provide the State Department approved appeal form to the person.
  - 5. Notice that the scope of the appeal is limited to challenges that the finding(s) are not supported by a preponderance of the evidence or that the actions found to be child abuse or neglect do not meet the legal definitions of child abuse or neglect. The State Department will be responsible for defending the determination at the State level fair hearing.
  - 6. A full explanation of all alternatives and deadlines contained in Sections 7.111 through 7.113.

#### **7.112 STATE LEVEL APPEAL PROCESS**

- A. Persons found responsible for an incident of child abuse or neglect by the county department shall have the right to a state level appeal to contest the finding. The request for appeal of the decision shall first be submitted to the State Department unit designated to handle such appeals. If the State Department and the Appellant are unable or unwilling to resolve the appeal in accordance with the provisions set forth below in this section, the State Department shall forward the appeal to the Office of Administrative Courts (OAC) to proceed to a fair hearing before an Administrative Law Judge (ALJ).
- B. The grounds for appeal shall consist of the following:
  - 1. The findings are not supported by a preponderance of credible evidence; or,

2. The actions ultimately found to be abusive or neglectful do not meet the statutory or regulatory definitions of child abuse or neglect.
- C. The person found to be responsible for child abuse or neglect shall have ninety (90) calendar days from the date of the notice of founded finding to appeal the finding in writing to the State Department. The written appeal shall be submitted on the State approved form provided by the county and shall include:
1. The contact information for the Appellant;
  2. A statement detailing the basis for the appeal; and,
  3. The county department notice of finding of responsibility for child abuse or neglect.
- D. The state level appeal process must be initiated by the person responsible for child abuse or neglect or his/her legal representative. The Appellant need not hire an attorney to appeal the county determination. If the individual is a minor child, the appeal may be initiated by his/her parents, legal custodian, or legal representative.
- E. The appeal must be submitted to the State Department within ninety (90) calendar days of the date of the notice of founded finding. If the appeal is filed more than ninety (90) calendar days from the date of the notice of founded finding, the Appellant must show good cause for not appealing within the prescribed period as set forth in Section 7.202.3, E. Failure to request State review within this ninety-day (90) period without good cause shall be grounds for the State Department to not accept the appeal.
- F. The founded finding shall be utilized for safety and risk assessment, employment, and background screening by the State Department while the administrative appeal process is pending.
- G. The Appellant shall have the right to appeal even if a dependency and neglect action or a criminal prosecution for child abuse is pending arising out of the same report. The State Department shall hold in abeyance the administrative process pending the outcome of the dependency and neglect or criminal action if requested by the Appellant or if the State Department determines that awaiting the outcome of the court case is in the best interest of the parties. If the Appellant objects to the continuance, the continuance shall not exceed one hundred eighty (180) days without the Appellant having the opportunity to seek review of the extended continuance by an Administrative Law Judge. The pendency of other court proceeding(s) shall be considered to be good cause to continue the appeal past the one hundred eighty (180) day timeframe.
- H. The following circumstances shall be considered to be admissions to the factual basis of the finding of responsibility for child abuse or neglect entered into the state automated case management system and shall be considered to be conclusive evidence of the person's responsibility for child abuse or neglect to support a motion for summary judgment submitted to the Office of Administrative Courts:
1. When a Dependency and Neglect Petition has been adjudicated against or a deferred adjudication entered against the Appellant on the basis of Sections 19-3-103 or 19-3-102 (1)(a), (b), or (c), C.R.S., arising out of the same factual basis as the founded finding in the state automated case management system;
  2. The Appellant has been found guilty of child abuse, or has pled guilty or nolo contendere to child abuse as part of any plea agreement including, but not limited to, a deferred judgment agreement, arising out of the same factual basis as the founded finding in the state automated case management system; or,
  3. The Appellant has been found guilty or has pled guilty or nolo contendere to a domestic violence related or alcohol traffic related offense arising out of the same factual basis as the founded report in the state automated case management system.
- I. When an Appellant requests an appeal, the State Department shall request the records relied upon in making the finding from the county department responsible for entering the finding, which has been appealed. The county department shall submit the record to the State Department as soon as practicable within the time frame requested by the Department.



- J. After the Appellant requests an appeal, the State Department shall inform the Appellant regarding the details of the appeal process, including timeframes and contact information.
1. The Appellant, as the party in interest, shall have access to the county record in order to proceed with the appeal. Appellant's use of the county file for any other purpose is prohibited unless otherwise authorized by law.
  2. Prior to providing access to the Appellant, the State Department shall redact identifying information contained in the county file to comply with state and federal law regarding the confidentiality of child abuse or neglect records or other protected information including, but not limited to, reporting party name(s) and addresses, Social Security Number, foster parent identifying information, and information pertaining to other parties in the case that the appellant does not have a legal right to access.
- K. The State Department is authorized to enter into settlement negotiations with the Appellant as part of the litigation process. The State Department is authorized to enter into settlement agreements that modify, overturn or expunge the reports as reflected in the state portion of the state automated case management system. The State Department is not authorized to make any changes in the county portion of the state automated case management system. In exercising its discretion, the State Department shall take into consideration the best interests of children, the weight of the evidence, the severity of the abuse or neglect, any pattern of abuse or neglect reflected in the record, the results of any local court processes, the rehabilitation of the Appellant, and any other pertinent information.
- L. The State Department and the Appellant shall have one hundred twenty (120) days from the date that the State Department receives the appeal to resolve the issue(s) on appeal. The 120 day time limit may be extended by agreement of both the Appellant and the State Department if it is likely that the additional time will result in a fully executed settlement agreement or resolution of the appeal.
- M. As soon as it is evident within the 120 days that the Appellant and the State Department will not resolve the issue(s) on appeal, the State Department shall forward a copy of the Appellant's original appeal document(s) to the Office of Administrative Courts in order to initiate the Office of Administrative Courts fair hearing process.
- N. If, by the end of the 120 day period, the State Department has been unable to contact the Appellant using the information submitted by the Appellant, including by first class mail, and the Appellant has not contacted the State Department, the appeal shall be deemed abandoned. The finding entered by the county department shall be upheld in the state automated case management system without further right of appeal. The State Department shall notify the Appellant of this result by first class mail to the address submitted by the Appellant.

#### **7.113 STATE FAIR HEARING BEFORE THE OFFICE OF ADMINISTRATIVE COURTS**

- A. When the Office of Administrative Courts receives the appeal documents from the State Department, the Office of Administrative Courts shall docket the appeal and enter a procedural order to the parties indicating the following:
1. The date and time for a telephone scheduling conference with the parties.
  2. During the telephone scheduling conference, the Office of Administrative Courts shall determine the date for the hearing. Following the scheduling conference, the Office of Administrative Courts will issue a further procedural order and notice of hearing. The order/notice will contain the hearing date, the fourteen (14) day deadline for the notice of issues, the fourteen (14) day deadline for response and deadline for filing pre-hearing statements. Any party requiring an extension or modification of any of the deadlines in the order may file a request with the Administrative Law Judge.
  3. The notice of issues shall include the following:
    - a. The specific allegations(s) that form the basis of the county department's finding that the Appellant was responsible for child abuse or neglect;

- b. The specific type and severity of child abuse asserted against Appellant and the legal authority supporting the finding; and,
    - c. To the extent that the State Department determines that the facts contained in the state automated case management system support a modification of the type or severity of child abuse or neglect determined by the county department, the State Department shall so notify the county department and the Appellant of that modification and the process shall proceed on the modified finding(s).
  - 4. The Appellant shall respond to the State Department's submittal by providing the factual and legal basis supporting the appeal to the State Department and to the Office of Administrative Courts.
  - 5. If the Appellant fails to participate in the scheduling conference referenced above or fails to submit the response referenced herein, the Office of Administrative Courts shall deem the appeal to have been abandoned by the Appellant and render an Initial Decision Dismissing Appeal. In accordance with the procedures set forth below, the Office of Appeals may reinstate the appeal for good cause shown by the Appellant.
  - 6. In the event that either party fails to respond to a motion to dismiss filed in the appeal, the Administrative Law Judge shall not consider the motion to be confessed and shall render a decision based on the merits of the motion.
- B. The Administrative Law Judge shall conduct the appeal in accordance with the Administrative Procedure Act, Section 24-4-105, C.R.S. The rights of the parties include:
- 1. The State Department shall have the burden of proof to establish the facts by a preponderance of the evidence and that the facts support the conclusion that the Appellant is responsible for the child abuse or neglect indicated in the notice of issues provided by the State Department. The state automated case management system is not the only acceptable evidence for establishing that the finding is supported by a preponderance of evidence;
  - 2. Each party shall have the right to present his or her case or defense by oral and documentary evidence, to submit rebuttal evidence, and to conduct cross-examination;
  - 3. Subject to these rights and requirements, where a hearing will be expedited and the interests of the parties will not be subsequently prejudiced thereby, the Administrative Law Judge may receive all or part of the evidence in written form or by oral stipulations;
  - 4. A telephonic hearing may be conducted as an alternative to a face-to-face hearing unless either party requests a face-to-face hearing in writing. The written request for a face-to-face hearing must be filed with the Office of Administrative Courts and the other party at least ten (10) calendar days before the scheduled hearing. A request for a face-to-face hearing may necessitate the re-setting of the hearing; and,
  - 5. Where facilities exist that have videoconferencing technology local to the county department that made the founded finding, either party may request that the hearing be conducted via that technology. The requesting party shall investigate the feasibility of this approach and shall submit a written request outlining the arrangements that could be made for video conference. The Office of Administrative Courts shall hold the hearing via videoconferencing for the convenience of the parties whenever requested and feasible. A request for a hearing via videoconferencing may necessitate the re-setting of the hearing.
- C. At the conclusion of the hearing, unless the Administrative Law Judge allows additional time to submit documentation, the Administrative Law Judge shall take the matter under advisement. After considering all the relevant evidence presented by the parties, the Administrative Law Judge shall render an Initial Decision for review by the Colorado Department of Human Services, Office of Appeals.
- D. The Initial Decision shall uphold, modify or overturn/reverse the county finding. The Administrative Law Judge shall have the authority to modify the type and severity level of the child abuse or neglect finding to meet the evidence provided at the hearing. The Administrative Law Judge shall not order the county to

modify its record; rather, the State Department shall indicate the outcome of the appeal in its portion of the state automated case management system.

- E. When an Appellant fails to appear at a duly scheduled hearing having been given proper notice, without having given timely advance notice to the Office of Administrative Courts of acceptable good cause for inability to appear at the hearing at the time, date and place specified in the notice of hearing, then the appeal shall be considered abandoned and the Administrative Law Judge shall enter an Initial Decision Dismissing Appeal. In accordance with the procedures set forth in Section 7.202.608, the Office of Appeals may reinstate the appeal for good cause shown by the Appellant.

#### **7.114 TRANSITION TO THE NEW APPEAL PROCESS**

- A. On or after March 31, 2011, all new appeals shall be submitted to the Colorado Department of Human Services section authorized by the Executive Director to process these appeals, using the state approved appeal form provided to individuals who have been found responsible for an incident of child abuse or neglect.
- B. If an individual submits a request for a record review or a fair hearing directly to the Office of Administrative Courts on or after March 31, 2011, the Office of Administrative Courts shall not begin to process that appeal and shall, instead, transfer the appeal request to the Colorado Department of Human Services section authorized by the Executive Director to process these appeals.
- C. If an individual requested a fair hearing before an Administrative Law Judge prior to the effective date of these rules, that appeal shall continue in accordance with the rule provisions in effect at the time that the request was received by the Office of Administrative Courts.
- D. If an individual requested a record review by an Administrative Law Judge prior to the effective date of these rules and the matter has not yet reached the decision stage by the Administrative Law Judge, the individual shall be notified that she/he has the option of requesting the Department to process the appeal under the revised process.

#### **7.115 STATE DEPARTMENT OFFICE OF APPEALS FUNCTIONS**

- A. Review of the Initial Decision and hearing record and entry of the Final Agency Decision shall be pursuant to state rules at Sections 3.850.72 - 3.850.73 (9 CCR 2503-8).
- B. Review shall be conducted by a State adjudicator in the Office of Appeals not directly involved in any prior review of the county report being appealed.
- C. The Final Agency Decision shall advise the Appellant of his/her right to seek judicial review in the State District Court, City and County of Denver, if the Appellant had timely filed Exceptions to the Initial Decision.
- D. If the Appellant seeks judicial review of the Final Agency Decision, the State Department shall be responsible for defending the Final Agency Decision on judicial review.
- E. In any action in any court challenging a county's founded finding of child abuse or neglect, the State Department will defend the statutes, rules, and state-mandated procedures leading up to the finding, and will defend all county actions that are consistent with statutes, rules, and state-mandated procedures. The State Department shall not be responsible for defending the county department for actions that are alleged to be in violation of, or inconsistent with, state statutes, state rules or state-mandated procedures.

#### **7.116 CONFIDENTIALITY OF APPEAL RECORDS**

- A. All records submitted by the parties as part of the state level appeal process and all notices, orders, agency notes created by or made part of the State Department's agency record shall be confidential and shall not be released or disclosed unless such release or disclosure is permitted by the applicable state statutes or Section 7.605.

- B. Initial and Final Agency Decisions where information identifying the Appellant, victim(s), other family members, or other minors have been blocked out may be released to the public.

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**7.200 OVERVIEW OF CHILD WELFARE SERVICES – PROGRAM AREAS 3, 4, 5, and 6 [Rev. eff. 1/1/14]**

Child Welfare Services constitutes a specialized set of services defined at Section 26-5-103, C.R.S., that are intended to strengthen the ability of families to protect and care for their own children, prevent involvement or continued involvement in the child welfare system, minimize harm to children and youth, and ensure permanency planning. The goal shall be to support the intactness of families, when appropriate, through the provision of services aimed at stabilizing the family situation and strengthening the parents/guardians in fulfilling their parental responsibilities to their children. Intervention shall be guided by respect for the family's integrity, knowledge of the legal base for action, and sound social work practice.

The following principles shall underlie the provision of Child Welfare Services:

- A. Children and youth shall have the right to be raised in an environment free from abuse or neglect preferably by their families of origin by providing reasonable efforts to maintain the family unit through the provision of in-home services.
- B. Placement shall be considered when there is evidence that leaving the child in the home would jeopardize the safety of the child or community. Reasonable efforts shall be made to prevent placement or to reunite the family as soon as safely possible if removal is necessary. In determining reasonable efforts to be made, and in making such reasonable efforts, the child's health and safety shall be the paramount concern. A court may determine that reasonable efforts shall not be required; otherwise, reasonable efforts shall be made to preserve and reunify families.
- C. Appropriate and culturally competent services that promote safety shall be provided to families, children, and youth in their own homes and in out-of-home placements.
- D. Children and youth who have been removed from the care of their parents shall have the right to a diligent search according to Section 7.304.52 (12 CCR 2509-4) for extended family members who can be considered as placement resources, to be placed in a safe environment, to not be moved indiscriminately from one placement to another, and to have the assurance of a permanency plan.
- E. Consideration of the child's age, culture, language, religion, and other needs shall guide the choice of all services provided. Race, color, and national origin of the child and the prospective parents are considered in foster and adoptive placements only in extraordinary circumstances.
- F. Case planning shall involve the parents so that relevant services can be provided to permit timely rehabilitation and reunification.
- G. Child Welfare Services shall be provided in collaboration with other community agencies on behalf of children, youth, and their families. Assessment tools or resources available through these community agencies shall be incorporated in the assessment, based on the culture and other needs of the family.

**7.200.1 PROGRAM AREA 3 – PROGRAM FOR PREVENTION AND INTERVENTION SERVICES FOR CHILDREN, YOUTH, AND FAMILIES AT RISK OF INVOLVEMENT WITH CHILD WELFARE [Eff. 1/1/14]**

The Program Area 3 (PA3) program provides prevention and intervention services for children, youth, and families at risk of involvement with child welfare. Services may be provided to assist families to safely care for their children.

A. Prevention services are voluntary and based on a human services professional decision regarding the family's need and on youth and family choice. Services may include:

- 1. Services that reduce risk and increase protective factors to decrease the likelihood of child abuse and neglect; or,

~~2. Services provided when a child or youth is in conflict with his/her family members, community, or at risk for abuse or neglect and do not meet the definition of unsafe as found in section 7.202.3.~~

~~Services cannot be provided when the child's circumstance meets the definition of unsafe as found in section 7.202.3.~~

~~B. Intervention services are voluntary and based on a human services professional decision regarding the family's need and youth and family choice. Services may include:~~

~~1. Proactive efforts to intervene when the immediate health, safety or well-being of a child is not at risk; or,~~

~~2. Services provided after a referral has been screened out; or,~~

~~3. Services provided when a case is assessed as not requiring child protection or youth in conflict services and the case is closed; or,~~

~~4. Services provided when a child welfare case has been closed, the child is safe as defined in section 7.202.3, and additional supports would improve a family's protective factors and reduce the possibility of recurrence of abuse or neglect.~~

#### **7.200.11 Eligibility Criteria [Eff. 1/1/14]**

##### **A. County Department**

~~A county is eligible to provide Program Area 3 prevention and intervention services when the county has a state-approved service delivery plan. The service delivery plan shall be submitted as an addendum to the Core Services Plan and shall include the process for referral and assessment to the prevention and intervention service.~~

##### **B. Families, Youth, and Children**

~~Families, youth, and youth/children are eligible for prevention and intervention services if a child/youth is in conflict with his/her family members, in conflict with the community, or at risk of abuse or neglect and do not meet criteria for a child protection or youth in conflict case.~~

~~Families, youth, and children are eligible for prevention and intervention services if a human services professional has determined the family has a need for the service.~~

##### **C. Community Agency or Another Division within the County Department**

~~A community agency or another division within the county department is eligible to refer a family, youth, or child for prevention or intervention services, or to provide services to a family, youth, or child if so stated in the county's state-approved service delivery plan addendum to the Core Services Plan.~~

#### **7.200.12 County Responsibilities**

~~The county department shall be responsible:~~

~~A. To deliver prevention and intervention services according to the state-approved service delivery plan that is an addendum to the Core Services Plan.~~

~~B. To ensure community agencies and/or other divisions within the county provide prevention and intervention services according to the state-approved service delivery plan.~~

~~C. To ensure community agencies and/or other division within the county department refer families, youth, and children to the prevention and intervention service according to the contract with the county Child Welfare Division.~~

~~D. To ensure community agencies and/or other divisions of human services offer prevention or intervention services according to the contract with the county department.~~

- E. ~~To ensure documentation in the approved statewide automated system of the names, age, ethnicity, gender, service provided, and the reason the service ended for families, youth, and children referred for or provided prevention and intervention services.~~
- F. ~~To ensure documentation in the approved statewide automated system(s) of all required data elements of each funding source used for prevention and intervention services.~~

### **7.200.13 Funding Sources [Eff. 1/1/14]**

~~Counties may use any available funding source to provide services under Program Area three, in accordance with the rules and requirements governing the specific funding stream utilized.~~

### **7.200.2 HUMAN IMMUNODEFICIENCY VIRUS (HIV) POLICY**

#### **7.200.21 Definitions**

- A. ~~Acquired Immunodeficiency Syndrome (AIDS): The late stage of the illness triggered by infection with Human Immunodeficiency Virus (HIV). A person receives an AIDS diagnosis when he or she has a CD4 (helper 1-cell) count of less than 200 and/or certain opportunistic infections common with advanced immune deficiency.~~
- B. ~~HIV: The detection by laboratory antibody tests of the presence of the Human Immunodeficiency Virus (HIV) in an individual.~~
- C. ~~Universal Precautions: Measures used to keep a barrier between an person and blood and/or other infectious bodily fluids. The precautions are published by the Centers for Disease Control as accepted methods of preventing the spread of infectious disease and, when used routinely and propely, are sufficient to control the spread of infectious blood borne diseases, including HIV. Following are the universal precautions:~~
  - 1. ~~Universal precautions apply to blood and to other body fluids containing visible blood. Blood is the single most important source of HIV in a care giving setting.~~
  - 2. ~~Universal precautions also apply to semen and vaginal secretions. Although both of these fluids have been implicated in the sexual transmission of HIV, they have not been implicated in transmission from client to care providers.~~
  - 3. ~~Universal precautions do not apply to feces, nasal secretions, sputum, sweat, tears, urine, saliva and vomitus unless they contain visible blood. The risk of transmission of HIV from these fluids, while theoretically possible, is extremely low or nonexistent.~~
  - 4. ~~In any contact with visible blood, use a barrier such as latex gloves. When these are not immediately available, such as immediate response to a nosebleed or wound, use a barrier such as a towel. If hands are exposed to blood, they must be washed with soap and water immediately after contact.~~

#### **7.200.22 Testing and Confidentiality**

- A. ~~For children and youth in the legal custody of the county department of social services, the county department shall recommend to the medical care provider that the child or youth be tested for HIV based on determination of risk including the following considerations:~~
  - 1. ~~Specific medical reasons for testing related to the well-being of the child or youth.~~
  - 2. ~~Authority to test based on legal mandates or the informed consent of the client or those authorized to make medical decisions for the client.~~
  - 3. ~~Mandatory pre and post test counseling shall include age appropriate information regarding the illness, assistance in dealing with psycho social issues, information about safer sex and a risk reduction plan.~~

~~4. A plan shall be developed for re-testing based upon risk behaviors.~~

~~5. In the event a child refuses to consent to testing for HIV, the medical care provider shall be requested to provide counseling to the child.~~

#### ~~B. Confidentiality~~

~~Section 25-4-1405(6), C.R.S., allows for minors to be examined and treated for HIV infection without the consent of the parent or guardian. Further, if the minor is age 16 or older, the results of the examination or treatment need not be divulged to the minor's parent or guardian, or to any person, unless necessary under reporting requirements of Title 25 or Title 19, C.R.S.~~

~~In the event that the county becomes aware of positive HIV test results, the county shall develop a plan for confidential management of test results and HIV status. The county's policy may limit access to the test results based on the need to know and must comply with provisions of Title 25, Article 4, Part 14, C.R.S. The need to know shall include, but not be limited to:~~

~~1. The care provider, with consideration of his or her capacity to provide appropriate physical and emotional care to a child or youth who is HIV-infected and his or her capacity to appropriately manage confidentiality issues. In the case of residential child care facility, residential treatment center, or child placement agency placement, HIV information shall be provided to the person designated by the facility to coordinate medical care.~~

~~2. The caseworker and supervisor for the child or youth, who must manage the case including medical care.~~

~~3. Child's biological parents based on the determination of risk to the child. The county department shall include the child's parents in decisions for medical procedures and treatment based on risk to the child, except where parental rights have been terminated.~~

#### ~~7.200.23 Service Provisions~~

##### ~~7.200.231 Non-Discrimination~~

~~The status of being at risk for HIV exposure or being diagnosed with HIV/AIDS shall not be a cause for denial of services.~~

##### ~~7.200.232 General Services~~

~~The county department shall identify and may refer for medical evaluation children or youth in county custody who are at risk of HIV infection, considering the following factors:~~

~~A. Infants born to known HIV infected mothers or mothers with high risk behavior.~~

~~B. Children who have been involuntary sexual partners because of sexual assault, rape, incest and/or sexual abuse.~~

~~C. Children with hemophilia who were exposed to blood or blood products before 1985 or children or youth who have received blood transfusions before March 1985.~~

~~D. Children engaged in injection drug use past or present, including other injection behaviors such as needle sharing.~~

~~E. Children engaged in unprotected, oral vaginal, or anal intercourse.~~

#### ~~7.200.3 CHILD WELFARE GRIEVANCE RESOLUTION PROCESS [Rev. eff. 8/1/13]~~

~~The governing body of each county, and city and county, shall establish a grievance process, including a citizen-review panel, as required by Section 19-3-211, C.R.S. A grievance filed by a complainant concerning the conduct~~



of a county department employee can be submitted to the county department or the Colorado Department of Human Services Client Services unit.

The following requirements apply to the grievance process:

#### A. Definitions

"Grievance" means a complaint filed by a complainant regarding the conduct of an employee of a county department of social services in performing his/her duties under Article 3 of the Children's Code.

"Grievance" does not include complaints regarding conduct by the courts, attorneys, law enforcement officials, employees of the State, foster parents or other providers of services to children, or other family members.

"Citizen Review Panel" means an advisory body appointed by the governing body of a county or city and county pursuant to Section 19-3-211, C.R.S. The members of such citizen review panel shall be appointed by the governing body without influence from the state department or the county department, be representative of the community, have demonstrable personal or professional knowledge and experience with children, and not be employees or agents of the state department or any county department. At least one member of the citizen review panel in each county and city and county shall be the parent of a minor child at the time of his or her appointment to serve on such panel.

"Complainant" means any person who was the subject of an investigation of a report of child abuse or neglect or any parent, guardian, or legal custodian of a child who is the subject of a report of child abuse or neglect and brings a grievance against a county department in accordance with the provisions of Section 19-3-211, C.R.S.

"Conduct" means the manner in which a county department employee behaves when performing his/her duties under Article 3 of the Children's Code. If an employee makes a decision that is appealable under Colorado statutes and the rules governing child welfare services, an individual may pursue those remedies. The grievance resolution process does not modify the time frames for pursuing the other forms of relief available under Colorado statutes and the rules governing child welfare services.

"Governing body" means the board of county commissioners of a county, or a city council of a city and county, in accordance with Section 19-1-103(54), C.R.S.

"Recommendation" means a proposed course of action that may be implemented by a county director to resolve a grievance. These proposed actions may include reassigning a case to a different employee, requiring an employee to receive training, or administering disciplinary action to an employee, subject to applicable safeguards afforded to the employee through the personnel system under which the employee is employed.

#### B. Time Frames for Resolving Grievances

Any grievance shall be forwarded to the county director for internal resolution within ten working days after it has been received by the county department.

The county director shall act on the grievance within twenty calendar days after s/he receives it. If the county director is able to resolve the grievance to the complainant's satisfaction, s/he will issue a written decision setting forth the resolution. If the county director is unable to resolve the grievance to the complainant's satisfaction within twenty (20) calendar days and the complainant has requested the grievance be referred to the Citizen Review Panel, the county director shall immediately refer the grievance to the Citizen Review Panel, together with the county director's proposed resolution of the grievance.

Within thirty calendar days after receipt of the grievance from the county director, the Citizen Review Panel will review or convene a hearing on the grievance and send a written recommendation regarding the grievance, together with the basis for its recommendation, to the county director and the complainant.

If the county director agrees with the Citizen Review Panel's recommendation, s/he will issue a written decision implementing the recommendation. If the county director or the complainant disagrees with the recommendation, the grievance shall be referred to the governing body.

Within thirty calendar days of receiving the grievance, the governing body shall send its written recommendation regarding the grievance, together with the basis for the recommendation, to the complainant, the county director and to any county employee who is the subject of the grievance. The county director shall issue a final decision including his/her plan to implement the governing body's recommendation, and shall send a copy of this report to the complainant and to the county employee who is the subject of the grievance. Within thirty calendar days after issuing this final decision, the county director shall submit a written report to the Citizen Review Panel including a disposition of the grievance, and shall send copies of the report to the complainant and to the county employee who is the subject of the grievance.

## ~~C. Citizen Review Panel~~

### ~~1. Access to Information and Confidentiality~~

~~A Citizen Review Panel shall have access to child abuse or neglect reports and any information from the complete case file that the governing body believes is pertinent to the grievance, which shall be reviewed solely for the purpose of resolving grievances pursuant to the provisions of this section, except that access to identifying information concerning any person who reported child abuse or neglect shall not be provided and no participant in the conflict resolution process shall divulge or make public any confidential information contained in a report of child abuse or neglect or in other case file records to which he or she has been provided access.~~

### ~~2. Informal Testimony~~

~~Upon the request of the complainant, the county department, or the subject of a grievance, a citizen review panel may receive testimony from experts or other witnesses. Such testimony must be provided voluntarily and without a fee. Further, such testimony will be provided without an oath, will not be subject to objections from parties to the grievance process, and the witness will not be subject to cross examination. Members of the Citizen Review Panel, however, may ask questions of the witness as the panel's procedures permit.~~

### ~~3. Scope of Inquiry and Recommendations~~

~~The Citizen Review Panel shall only inquire into and make recommendations concerning grievances as presented by a complainant and as defined above. The Citizen Review Panel may not access records or receive testimony unless the record or testimony is directly related to a grievance property referred to the panel. Once the panel has made a recommendation concerning a grievance, or the time for making such a recommendation has expired, the panel may not inquire further into the grievance. The panel may not inquire into the conduct of courts, attorneys, law enforcement officials, employees of the State, foster parents or other providers of services to children, or other family members, nor may the panel inquire into the conduct of a county department employee if no grievance concerning that employee or that conduct has been properly referred to the panel.~~

~~The authority of the Citizen Review Panel is limited to making recommendations as defined above. Specifically, the panel may only recommend actions that:~~

- ~~a. Will resolve a particular grievance concerning the conduct of a county department employee performing his/her duties under Article 3 of the Children's Code; and,~~
- ~~b. Can be implemented by the County Director.~~

## ~~D. Annual Reports~~

~~On or before July 31 of each year, every county or city and county shall submit to the State Department an annual report regarding the resolution of grievances pursuant to this section. At a minimum, this report shall include:~~

1. ~~The number of grievances received by the County Director, the number of grievances referred to the Citizen Review Panel, the number of grievances referred to the governing board, and the actual time frames for resolving grievances at each level.~~
2. ~~A brief description of the disposition of the grievances, including the number that were concluded without any action taken, the number which were substantiated, the number resolved by case reassignment, the number resolved by requiring additional training, the number resolved by imposing disciplinary action against a county employee, and the number resolved in other ways.~~
3. ~~A copy of its county grievance policy; and,~~
4. ~~A list identifying the Citizen Review Panel members.~~

~~E. Counties shall publicize:~~

1. ~~The availability of the process for all dependency and neglect cases through the "Notice of Rights and Remedies" and by informing child welfare clients, guardians, and legal custodians of the process during the initial contacts with parties and periodically throughout the provision of services related to dependency and neglect cases.~~
2. ~~The rights and remedies for families as specified in Section 7.200.4.~~
3. ~~Any other information about the process as deemed relevant by the governing body.~~

**~~7.200.4 REQUIRED NOTICE OF RIGHTS AND REMEDIES~~**

- A. ~~All county departments shall utilize the state prescribed "Notice of Rights and Remedies for Families" in cases subject to Article 3 of the Colorado Children's Code, "Dependency and Neglect".~~
- B. ~~County departments shall add county-specific information to the state prescribed form and supply copies of the notice to all law enforcement agencies within the county or district.~~
- C. ~~The notice shall be delivered at the time of a child's removal to the parent(s) and family from whom the child is removed by court order or by law enforcement personnel. The notice shall specify the cause of the removal of the child or children.~~
  1. ~~If the removal is an emergency pursuant to Section 19-3-401, C.R.S., a copy of the court order directing the removal of the child or children from the home shall be delivered to the family promptly upon its availability.~~
  2. ~~If the removal of the child or children is not an emergency, a copy of the court order directing the removal shall also be provided to the parents and family at the time of removal.~~

**~~7.200.5 MANDATORY REPORTING OF CHILD ABUSE OR NEGLECT~~**

~~All county department staff who have reasonable cause to know or suspect child abuse or neglect as set forth in Section 19-3-304, C.R.S., are mandated to report such information to the appropriate county department staff or local law enforcement.~~

**~~7.200.6 REFERRALS~~**

~~"Referral" means a report made to the county department that contains one or more of the following:~~

- A. ~~Allegations of child abuse or neglect as defined in Section 19-1-103(1), C.R.S.;~~
- B. ~~Information that a child or youth is beyond the control of his/her parent;~~

~~C. Information about a child or youth whose behavior is such that there is a likelihood that the child or youth may cause harm to him/herself or to others, or who has committed acts that could cause him/her to be adjudicated by the court as a delinquent;~~

~~D. Information indicating that a child or youth meets specific Program Area 6 requirements and is in need of services.~~

#### **7.200.61 Documentation of Referrals**

~~All reports that meet the definition of a referral shall be entered into the State automated system (TRAILS). Any time a case is opened, it shall come through the referral or assessment process in TRAILS with the exception of Interstate Compact on the Placement of Children (ICPC), out of state subsidized adoption, and Division of Youth Corrections (DYC) Medicaid-only.~~

#### **7.201 PROGRAM AREA 4 – YOUTH IN CONFLICT**

##### **7.201.1 DEFINITION OF PROGRAM AREA 4**

~~Program Area 4 services are provided to reduce or eliminate conflicts between youth and their family members or the community when those conflicts affect the youth's well-being, the normal functioning of the family or the well-being of the community. The focus of services shall be on alleviating conflicts, protecting the youth and the community, re-establishing family stability, or assisting the youth to emancipate successfully.~~

##### **7.201.2 TARGET GROUPS**

~~A. Children and youth who are beyond the control of their parents or guardians.~~

~~B. Children and youth whose behavior is such that there is a likelihood they may cause harm to themselves or to others or who have committed acts that could cause them to be adjudicated a delinquent child by the court.~~

##### **7.201.3 INITIAL ASSESSMENT**

~~A. The county department shall respond, either with a face-to-face intervention or by telephone, when notified by the court appointed detention screener or a law enforcement officer, of a child or youth in the custody of a law enforcement agency who is inappropriate for secure detention but cannot be returned home.~~

~~B. The county department shall complete a needs assessment for children or youth who do not require physical restriction but for whom immediate removal from the home appears necessary for his/her protection or the protection of others. The county department shall provide needed services, other than secure detention, such as temporary placement, crisis intervention, or in home services.~~

~~C. A child or youth shall not be removed from the home without police protective custody or hold, a court order, or a signed voluntary placement agreement. Before or at the conclusion of the court-ordered placement (72 hours) or police hold (48 hours), the child or youth shall:~~

~~1. Be returned home; or,~~

~~2. Remain in court-ordered placement; or,~~

~~3. Continue in placement by virtue of a voluntary placement agreement signed by the parents/guardians.~~

#### **7.202 PROGRAM AREA 5 – CHILDREN IN NEED OF PROTECTION**

**7.202.1 (None) [Rev. eff. 3/2/13]**

**7.202.2 (None) [Rev. eff. 3/2/13]**

**7.202.3 DEFINITIONS [Rev. eff. 3/2/13]**

"Agency response" means the protocol prescribed by the Department that guides practice pertaining to the protection of children in the dual-track response system.

"Assessment" and the term "investigation", as used in Section 19-3-308, C.R.S., are interchangeable in these rules. "Assessment" means work conducted by a case worker to engage the family and the community, to gather information to identify the safety, risks, needs and strengths of a child, youth, family, and community to determine the actions needed.

Child abuse or neglect is defined in Section 19-1-103(1), C.R.S.

"Colorado Safety Assessment Instrument" means the instrument in the State automated case management system that guides a case worker through a safety assessment process.

"De novo" means that the issue is reviewed once again as if the appeal were the first review.

Differential Response" provides a dual-track response system for referrals that meet the criteria for assignment. The two response options are the High Risk Assessment (HRA) and the Family Assessment Response (FAR).

"Expungement" means the designation of a report or record whereby it is deemed not to have existed for the purpose of employment and background screening. Expungement of a founded finding of abuse or neglect shall not preclude the county department from maintaining records of the report in the case file or in the State automated case management system for purposes of future safety and risk assessments.

Family Assessment Response", also referred to as "FAR", means the track established for low and moderate risk situations, where no one is identified as a victim or person responsible for abuse or neglect.

"Founded finding" means that the child abuse or neglect assessment established that an incident(s) of child abuse or neglect has occurred, by a preponderance of evidence.

"Framework" means a method for organizing and analyzing information including, but not limited to:

A. Danger/harm;

B. Complicating/risk factors;

C. Child vulnerability;

D. Gray areas;

E. Cultural considerations/race;

F. Safety/strengths;

G. History;

H. Next steps.

"Good cause" means a legitimate reason why the process set forth herein should be modified. Such reasons may be that it was not possible for a party to meet a specified deadline and there was incapacity of the party or representative, lack of proper notice of the availability of the appeal process, additional time is required to obtain documents which were timely requested but not delivered, or other circumstances beyond the control of the party.

"High Risk Assessment" means the track established for high risk situations, where a person responsible for abuse or neglect and the victim(s) are identified and a finding of abuse or neglect is made.

"Impending danger" means threats to child safety not occurring at present but likely to occur in the near future and likely to result in severe harm to a child.

"Incident of egregious abuse or neglect" means an incident of suspected abuse or neglect involving significant violence, torture, use of cruel restraints, or other similar, aggravated circumstance.

"Inconclusive finding" means that there was some likelihood that abuse or neglect occurred but the child abuse or neglect assessment could not obtain the evidence necessary to make a founded finding of child abuse or neglect.

"Intrafamilial abuse" means any case of abuse or neglect as defined in Sections 19-1-103(1) and 19-3-102(1) and (2), C.R.S., that occurs within a family context by a child's parent, stepparent, guardian, legal custodian, or relative, by a spousal equivalent, domestic partner, or by any other person who resides in the child's home or who has access to the child's home for the purpose of exercising care for the child; except that "intrafamilial abuse" shall not include abuse by a person who is regularly in the child's home for the purpose of rendering care for the child if such person is paid for rendering care and is not related to the child.

"Institutional abuse" means any case of abuse or neglect that occurs in any public or private facility in the state that provides child care out of the home, supervision, or maintenance. "Facility" includes, but is not limited to, family child care homes, foster care homes, and any other facility subject to the Colorado "Child Care Licensing Act" and described in Section 26-6-102, C.R.S. "Institutional abuse" shall not include abuse that occurs in any public, private, or parochial school system, including any preschool operated in connection with said system; except that, to the extent the school system provides extended day services, abuse that occurs while such services are provided shall be institutional abuse.

"Moderate to severe harm" refers to the consequence of maltreatment at a level consistent with a moderate, severe or fatal level of physical abuse, sexual abuse or neglect, as defined in Section 7-202.601.

"Near fatality" means a case in which a physician determines that a child is in serious, critical, or life-threatening condition as the result of sickness or injury caused by suspected abuse, neglect, or maltreatment.

"Preponderance of evidence" means credible evidence, put forth by either party that the claim is more probably true than false.

"Present danger" means immediate, significant, and clearly observable threat to child safety that is actively occurring and will likely result in severe harm to a child.

"RED Team" is an acronym that stands for Review, Evaluate and Direct. The RED Team is a group decision-making process that utilizes the framework and agency response guide to determine county department response to referrals.

"Safe" is a condition where there is no present or impending threat of moderate to severe harm to a vulnerable child from current known family conditions, or the protective capacities in the family are sufficient to control existing dangers of threats of danger and protect the vulnerable child.

"Safety plan" refers to a written plan that:

- A. Establishes protection for the child;
- B. Is made by the family or natural supports, safety service providers, and the county department;
- C. Does not rely on the person responsible for abuse or neglect to initiate protective actions in order for the plan to be operationalized.

"Spousal equivalent" or "domestic partner" means a person who is in a family-type living arrangement with a parent and who would be a stepparent if married to that parent.

"Third-party abuse" means a case in which a child is subjected to abuse by any person who is not a parent, stepparent, guardian, legal custodian, spousal equivalent, or any other person not included in the definition of intrafamilial abuse or institutional abuse, as defined in this section.

"Threat of moderate to severe harm" relates to conditions, behaviors or attitudes that could result in moderate to severe harm.

"Traditional response" is the response process defined in High Risk Assessment for all counties not selected to participate in Differential Response. This response shall be used for all referrals and assessments of low, moderate, and high risk.

"Unfounded finding" means that the child abuse or neglect assessment showed there is clear evidence that no incident of child abuse or neglect occurred.

"Unsafe" is a condition where there is a present or impending threat of moderate to severe harm to a vulnerable child from current known family conditions and protective capacities in the family are insufficient to control danger or threats of danger.

#### **~~7.202.4 PROCEDURES FOR REFERRALS OF ABUSE OR NEGLECT [Rev. eff. 3/2/13]~~**

- ~~A. The county department shall have staff available twenty-four (24) hours a day to receive referrals of alleged abuse and neglect, conduct initial reviews of such referrals and assess those referrals that are appropriate for child protective services. Continuously available means the assignment of a person to be near an operable telephone, pager system, or to have such arrangements made through agreements with the local law enforcement agencies. The county department shall ensure that all referrals are entered into the State automated case management system by the end of the business day.~~
- ~~B. The county department shall establish response protocols outlining the county plan for weekends, holidays, and after-hour coverage, to include:~~
- ~~1. How the county will ensure that those individuals reporting abuse or neglect after hours are directed to the designated number or agency for response;~~
  - ~~2. Requirements for thorough documentation to support the disposition/actions of the emergency response worker; and,~~
  - ~~3. That referrals must be entered into the State automated case management system as outlined in Sections 7.200.6 and 7.200.61 by the next business day.~~
- ~~C. The county department shall provide appropriate referral information to the reporting party in those situations in which there are inadequate grounds to constitute assignment for assessment. Either casework or supervisory staff shall inform, whenever possible and appropriate, the reporting party of the decision not to accept as an assessment and the reasons for that decision.~~
- ~~D. Within thirty calendar days after receipt of a referral of suspected child abuse or neglect from a specified mandatory reporter, the county department shall notify the specified mandatory reporting party who is and continues to be officially and professionally involved in the ongoing care of the child who was the subject of the referral and has a need to know in order to fulfill his or her professional and official role in maintaining the child's safety. The county department shall provide the specified mandatory reporting party with: the name of the child and the date of the referral; whether the referral was accepted for assessment; whether the referral was closed without services; whether the assessment resulted in services related to the safety of the child; the name of and contact information for the county caseworker responsible for the assessment; notice that the reporting mandatory reporter may request updated information within ninety calendar days after the county department received the referral; and, information concerning the procedure for obtaining updated information. Such specified mandatory reporters are:~~
- ~~1. Hospital personnel engaged in the admission, care, or treatment of children;~~
  - ~~2. Mental health professionals;~~
  - ~~3. Physicians or surgeons, including physicians in training;~~
  - ~~4. Registered nurses or licensed practical nurses;~~
  - ~~5. Dentists;~~

6. Psychologists;
7. Unlicensed psychotherapists;
8. Licensed professional counselors;
9. Licensed marriage and family therapists;
10. Public or private school officials or employees;
11. Social workers or workers with any facility or agency that is licensed or certified as a child care provider;
12. Victim's advocates of a battered women's shelter, rape crisis organization, or comparable community-based organization, except that of a law enforcement agency; and,
13. Clergy members pursuant to Section 19-3-304(2)(aa)(III), C.R.S.

~~E. The county department shall enter all referrals into the State automated case management system as outlined in Sections 7.200.6 and 7.200.61, and conduct an initial review. The initial review shall decide the appropriateness of assessment and/or RED Team review. It shall include, but not be limited to, the following activities:~~

- ~~1. Checking the State automated case management system for prior involvement, which is to be reviewed in terms of actions taken and services provided and used to inform whether there is known or suspected abuse or neglect or serious threats of harm to a child. The review and the decision not to accept a referral for assessment shall be documented in the State automated case management system. The supervisor is to ensure that the review and the documentation have occurred.~~
- ~~2. Reviewing county department files.~~
- ~~3. Obtaining information from collateral sources, such as schools, medical personnel, law enforcement agencies, or other care providers.~~

~~F. The county department shall gather and document the following information as available:~~

- ~~1. Family members and birth dates.~~
- ~~2. Relationships of individuals in the household.~~
- ~~3. Identified alleged victims, birth dates, and their current location.~~
- ~~4. Reasonable effort to secure the identity of the person alleged to be responsible for the abuse or neglect, as well as the responsible person's date of birth, Social Security Number, and last known address.~~
- ~~5. Presenting problems—specific allegations.~~
- ~~6. Reporter's credibility and name, address, and phone number.~~
- ~~7. Relationship of reporter to family.~~
- ~~8. Other potential witnesses.~~
- ~~9. Collateral agencies and individuals involved with the family.~~
- ~~10. Records check—results of internal and State automated case management system inquiries.~~
- ~~11. Date and time child abuse or neglect referral received.~~



~~12. Referrals made.~~

~~13. Family strengths and supports, if known.~~

~~14. Possible solutions for resolving the presenting problem, if known.~~

~~15. Race and ethnicity, if known.~~

~~16. Information as to whether or not the children have American Indian or Alaskan Native heritage, and if so, the Tribal affiliation.~~

~~G. The county department shall assign a referral for assessment if it:~~

~~1. Contains specific allegations of known or suspected abuse or neglect as defined in statutes and regulations. A "known" incident of abuse or neglect would involve those referrals in which a child has been observed being subjected to circumstances or conditions that would reasonably result in abuse or neglect. "Suspected" abuse or neglect would involve those referrals that are made based on patterns of behavior, conditions, statements or injuries that would lead to a reasonable belief that abuse or neglect has occurred or that there is a serious threat of harm to the child.~~

~~2. Provides sufficient information to locate the alleged victim.~~

~~3. Identifies a victim under the age of eighteen (18).~~

~~H. Appropriate reasons why a county department, with supervisor approval, may choose not to accept a referral include the following:~~

~~1. When the current allegations have previously been assessed and determined to be unfounded;~~

~~2. Refer to other state social/human services department;~~

~~3. Referral does not meet criteria of abuse or neglect as defined in statutes and regulations;~~

~~4. Referral lacks sufficient information to locate child/family;~~

~~5. Referral is duplicative of a previous referral (if so, associate with the duplicate referral in the State's automated case management system);~~

~~6. Alleged perpetrator in referral is third (3rd) party, as defined in statutes and regulations, county department shall refer to law enforcement;~~

~~7. Referral information contains allegations of past incident of abuse/neglect — no current allegation of abuse or neglect.~~

~~8. Client/family refused services not court ordered for assessment (applicable for Program Area 4 only); or,~~

~~9. Other (requires documented explanation in the State's automated case management system).~~

~~I. If a county department receiving a referral determines that another county has responsibility, the receiving county department shall forward the referral to the responsible county department as soon as possible, but no longer than eight (8) hours of determining responsibility, by entering the referral into the State automated case management system. The receiving county department shall make personal contact with the responsible county to verify receipt of the referral.~~

~~J. The county department shall ensure that referrals that do not need to be assigned for assessment are documented in the State automated case management system with the reasons why further assessment was not needed. In those referrals in which a full assessment is not going to be conducted the supervisor shall approve that decision.~~

~~K. The county department's decision of how quickly to initiate an assessment is based on specific reported information that is credible and that indicates whether a child may be unsafe or at risk of harm.~~

#### **7.202.41 Referral Response Process [Rev. eff. 3/2/13]**

~~A. The county department shall assign priority in response time using the following criteria:~~

~~1. Immediate and/or same day response is required when the referral indicates that:~~

~~a. There may be present danger of moderate to severe harm; or,~~

~~b. The child's vulnerability and/or factors such as drug and alcohol abuse, violence, isolation, or risk of flight from one county to another county or state, increase the need for immediate response.~~

~~c. If the referral is received after regular business hours and the response time assigned is immediate, the time frame is immediate and/or up to eight hours.~~

~~2. End of the third calendar day following receipt of the referral when the referral indicates that:~~

~~a. There may be impending danger of moderate to severe harm; or,~~

~~b. The child's vulnerability and/or factors such as drug and alcohol abuse, violence, isolation, or risk of flight from one county to another county or state, increase the need for intervention in the near future.~~

~~3. Within five (5) working days from the date the referral is received when the referral indicates maltreatment or risk of maltreatment to a child and indicates an absence of safety concerns. The count excludes the date of referral.~~

~~4. If the caseworker is unable to locate the child within the assigned response time, reasonable efforts shall continue to locate the child according to the original assigned response time.~~

~~B. Differential Response (also defined in Section 7.202.3) provides a dual-track response system for referrals that meet the criteria for assignment. The two response options are the High Risk Assessment (HRA) and the Family Assessment Response (FAR).~~

~~C. County departments that have completed a readiness self-assessment and planning process will be selected to participate in Differential Response by the Executive Director. The county departments shall utilize a RED Team process to determine the appropriate track assignment and response time based on the information gathered in the referral, except for referrals indicating an immediate response. All RED Team decisions shall be approved by a supervisor. High Risk Assessment is mandatory for referrals alleging a child fatality, near fatality, and egregious incident of child abuse or neglect, institutional abuse, and sexual abuse. RED Teams may use discretion to assign a High Risk Assessment based on the following factors: present danger, high level of risk, multiple previous referrals, and/or presenting case characteristics such as type of alleged maltreatment paired with high vulnerability of the alleged victim. The Family Assessment Response is for referrals with low to moderate risk.~~

#### **7.202.5 ASSESSMENT PROCEDURES [Rev. eff. 3/2/13]**

The county department shall, in both a High Risk Assessment and a Family Assessment Response, begin the assessment phase with face to face contact with the family and/or alleged victim and gather information to:

A. Assess for safety and take action to secure safety, if indicated;

B. Assess risk, needs, and strengths of children and families;

C. Obtain culturally relevant and appropriate resources for children and their families; and,

~~D. All counties shall enter a finding of founded, inconclusive or unfounded, as an outcome of the assessment in the State automated case management system. In a Family Assessment Response, no finding shall be made.~~

**7.202.51 Written Procedures [Rev. eff. 3/2/13]**

~~A. The county department shall develop written cooperative agreements with law enforcement agencies that include:~~

- ~~1. Protocol for cooperation and notification between parties on child abuse and neglect referrals and child maltreatment deaths.~~
- ~~2. Protocol for distributing the Notice of Rights and Remedies when required by Section 19-3-212, C.R.S., and Section 7.200.3, G, of this staff manual.~~
- ~~3. Joint law enforcement investigation and child welfare assessment procedures.~~
- ~~4. Procedures for independent law enforcement investigation and child welfare assessment by either party.~~
- ~~5. Procedures for law enforcement investigation of abuse or neglect in out-of-home care settings. A law enforcement investigation regarding the criminal aspects of an institutional abuse case shall not relieve the county department of its responsibility to assess the safety of the children in out-of-home care settings.~~

~~B. The county department may develop a Memorandum of Understanding with Child Advocacy Centers as defined in Section 19-1-103(19.5), C.R.S., that is to include:~~

- ~~1. Protocols with advocacy center authorizing the use of their video tape or audio tape equipment;~~
- ~~2. Interviewers are to be qualified;~~
- ~~3. Interviews should meet the National Children's Alliance performance forensic standards for persons conducting these forensic interviews, as found in the National Children's Alliance Standards for accredited member programs; no later amendments or editions are incorporated. Copies of these standards are available from the Colorado Department of Human Services, Division of Child Welfare, 1575 Sherman Street, Denver, Colorado 80203, or at any State publications depository library;~~
- ~~4. The county department is not responsible for the training of the forensic interviewer employed by the advocacy center;~~
- ~~5. Procedures for conducting forensic interviews in a manner that is of a neutral fact-finding nature and coordinated to avoid duplicate interviews; and,~~
- ~~6. The child advocacy center shall provide technical assistance for forensic interviews, forensic medical examinations, or evidence collection or preservation.~~

~~C. The county department shall develop written procedures for providing updated information to the specified mandatory reporting party, identified in Section 7.202.4, D, upon request within ninety (90) calendar days after the county received the referral regarding:~~

- ~~1. The name of the child and the date of the referral;~~
- ~~2. Whether the referral was accepted for assessment;~~
- ~~3. Whether the referral was closed without services;~~
- ~~4. Whether the assessment resulted in services related to the safety of the child; and,~~
- ~~5. The name of and contact information for the county caseworker responsible for the assessment.~~

## **7.202.52 Assessment Requirements [Rev. eff. 3/2/13]**

The assessment of intra-familial, institutional, or third party abuse shall be conducted as set forth in Sections 19-3-308(2), (3), (4) through 19-3-308.5, C.R.S. To the extent that is reasonably possible, this shall occur as soon as possible following the receipt of the referral according to the county's prioritization of the incident.

- A. ~~Within the assigned response timeframe, the assessment shall include a face-to-face interview with or observation of the child who is the subject of a referral of abuse or neglect. An interview shall occur if the child has verbal capacity to relate information relevant to safety decisions; otherwise, an observation of the child is sufficient.~~
- B. ~~In an assessment, the interview shall be conducted out of the presence of the suspected person(s) responsible for the abuse or neglect, except in a Family Assessment Response, the initial interview may be conducted with the entire family, when doing so does not compromise the safety of the child(ren). Children may be interviewed outside the presence of the suspected person(s) responsible for the abuse or neglect at any point during the assessment.~~
- C. ~~The assessment shall determine the names and conditions of any children living in the same place as the child who is the subject of the referral.~~
- D. ~~As a part of the assessment, reasonable efforts shall be made to:~~
  - 1. ~~Interview any person(s) alleged as responsible for the abuse or neglect.~~
  - 2. ~~Advise the person(s) alleged as responsible for the abuse or neglect or the referral.~~
  - 3. ~~Give the person(s) alleged as responsible for the abuse or neglect an opportunity to respond to the allegations.~~
- E. ~~The assessment shall include use of the Safety Intervention Model as described in Section 7.202.53. To assess for safety, interviews shall be conducted with all children, caregivers, and family members in the home to gather information that is relevant for determining whether a child is safe. These interviews shall determine:~~
  - 1. ~~Extent of child maltreatment;~~
  - 2. ~~Circumstances surrounding the child maltreatment;~~
  - 3. ~~Child functioning on a daily basis;~~
  - 4. ~~Adults and caregiver functioning on a daily basis;~~
  - 5. ~~Parenting practices; and,~~
  - 6. ~~Disciplinary practices.~~
- F. ~~Other persons identified through the assessment who may have information regarding the alleged maltreatment shall be interviewed, if possible, as part of the assessment.~~
- G. ~~A visit to the child's place of residence or place of custody shall be completed as part of the assessment if:~~
  - 1. ~~Home conditions are the subject of the referral; or,~~
  - 2. ~~Information obtained in the interview process indicates assessment of the home environment is necessary due to safety issues.~~
  - 3. ~~The visit will assist the case worker to determine the disposition of the allegations in a High Risk Assessment.~~

- H. ~~The assessment shall include consideration of race/ethnicity, religion, accepted work-related practices of agricultural communities, and accepted child-rearing practices of the culture in which the child participates.~~
- I. ~~Allegations of Sexual Abuse~~
1. ~~When there are allegations of sexual abuse in the High Risk Assessment, counties shall, at a minimum, conduct in-state and out of state sex offender checks of the person(s) responsible for the alleged abuse/neglect, using one of these two options:~~
    - a. ~~Option 1: Counties shall use Colorado Courts to check if a person(s) responsible for the alleged abuse/neglect is a sex offender, or,~~
    - b. ~~Option 2: Counties shall use both the in-state and out-of-state government websites to check to see if a person(s) responsible for the alleged abuse/neglect is a sex offender.~~
  2. ~~When conducting any website checks, counties shall:~~
    - a. ~~Use due diligence in following the specific check criteria for each website, and,~~
    - b. ~~Also check for adult misdemeanor and/or juvenile adjudication records with a sexual offense.~~
    - c. ~~Access or attempt to access government issued (tamper-resistive), photographic identification of the person(s) responsible for the alleged abuse/neglect and record full name(s), to include nicknames and/or aliases, address(es) and date(s) of birth in the automated case management system;~~
    - d. ~~Access or attempt to access information from the alleged person(s) responsible for the alleged abuse/neglect on any possible involvement with law enforcement, probation, parole, corrections, community corrections, and/or child protection services in Colorado, or in any other state, and/or jurisdiction (federal, military, tribe, and/or country);;~~
    - e. ~~Document all results in the State automated case management system.~~
    - f. ~~Immediately report any possible violations of sex offender registration to local law enforcement; and,~~
    - g. ~~Report all law enforcement verified matches of sex offenders to the individual, supervising officer/agent or team responsible for community supervision and public safety.~~
- J. ~~The assessment shall include use of the risk assessment model as described in Section 7.202.54.~~
- K. ~~When a county department substantiates child abuse or neglect regarding any child under the age of five years, that county department shall refer the child to the appropriate state or local agency for developmental screening within sixty days after abuse or neglect has been substantiated. The county may also refer any child under the age of five years in a Family Assessment Response, where there is no finding, if a parent requests or the child presents with needs that might benefit from a developmental screening as determined by the responding case worker.~~
- L. ~~All interactions with the family, as part of the assessment shall be documented in the State automated case management system. Any specific evidence gathered, such as photographs or videotapes, shall be filed in the case record and referenced in the State automated case management system.~~
- M. ~~At the time of a new assessment, the county department shall specifically review the history of any county department's involvement occurring in any jurisdiction concerning any child in a household.~~

~~Each prior involvement is to be reviewed in terms of actions taken and services provided. The supervisor is to ensure that the review and the documentation have occurred. The county shall:~~

1. Determine whether there is a pattern of behavior in the family that is a threat to the safety of the child(ren) and take action to secure safety, if indicated, or seek more information to make a determination; and

2. Document in the assessment closure section of the State automated case management system that a review related to prior involvement occurred.

N. Reasonable efforts shall be made to prevent out-of-home placement, unless an emergency exists, and to maintain the family unit. Safety plans other than placement shall be considered, including but not limited to the provision of in-home and Core Services, if appropriate and available; the possibility of removing the maltreating adult from the home rather than the child; the possibility of the non-maltreating parent placing child and self in a safe environment; or the availability of kinship placement.

O. Taking children into custody—See Section 19-3-401, C.R.S.

P. Upon completion of a High Risk Assessment, the county department shall consider the assessment founded if there is a preponderance of evidence to support that abuse or neglect occurred.

Q. For purposes of assessment, the interview of the child may be audio or video taped. If audio or video taping is conducted, the following standards shall be followed:

1. Any interview of a child concerning a referral of child abuse may be audio taped or video taped as set forth in Section 19-3-308.5, C.R.S.

2. The audiotaped or videotaped interview shall be conducted by a competent interviewer and may be conducted at the child advocacy center, as defined in Section 19-1-103(19.5), C.R.S., that has a Memorandum of Understanding with the county department responsible for the assessment or by a competent interviewer for the county department, except that an interview shall not be videotaped when doing so is impracticable under the circumstances or will result in trauma to the child, as determined by the county department.

3. The child shall be advised that audio or video taping of the interview is to be conducted and the advisement shall be documented. If the child objects to video taping of the assessment, such taping shall not be conducted by the county department.

4. If it is the county department's policy to routinely video or audio tape interviews, and an exception is made, the reason for the exception shall be noted in the record.

5. When there is a request by any party to the action to view or listen to an audio or video tape, the child or the guardian ad litem shall be notified in advance of the request, when possible.

6. Access to these tapes shall be subject to the rules of discovery and governed by the confidentiality provisions under Section 7.000-72.

#### **7.202.53 Safety Intervention Model [Rev. eff. 3/2/13]**

The Safety Intervention Model is defined as the actions and decisions required throughout involvement to:

A. Identify and assess threats to child safety;

B. Plan for an unsafe child or children to be protected;

C. Facilitate caregivers in taking responsibility for child protection; and,

D. Manage plans designed to assure child safety while a safe and permanent home is established.

#### **7.202.531 Child Safety at Initial Contact [Rev. eff. 3/2/13]**

- ~~A. At the point of first contact with the alleged child victim(s), the assessment shall focus immediately on whether a child is unsafe.~~
- ~~B. To assess for safety, county departments shall consider the safety threshold criteria, the fifteen safety concerns, and caregiver protective capacities.~~
- ~~C. If the child is unsafe, the caseworker shall analyze whether an in-home safety plan can reasonably be expected to control safety concerns and either develop a safety plan as described in Section 7.202.534 or, if necessary, initiate an out-of-home placement.~~
- ~~D. The safety plan creates protection for a child and shall include reasonable means by which child safety can be assured while safety assessment continues.~~
- ~~E. In the first thirty (30) calendar days of a Family Assessment Response, upon supervisory approval, the caseworker may change tracks to a High Risk Assessment to assess, attain or maintain child safety due to lack of cooperation or additional information gathered during the assessment, or if requested to do so by the person(s) alleged as responsible for the abuse/neglect. This change will be made in the State automated case management system and all information entered to date will be transferred.~~
- ~~F. If at any point the safety becomes unmanageable in a Family Assessment Response, the caseworker, with approval from the supervisor, may open a case and/or request court orders. If at any point new information is gathered that contains information defined in Section 7.202.4, G, a new referral shall be generated.~~

**~~7.202.532 Parameters for Use of the Colorado Safety Assessment Instrument [Rev. eff. 3/2/13]~~**

- ~~A. Completion of the Colorado Safety Assessment Instrument is required:
 
  - ~~1. As part of an assessment including when there are new allegations on an open child protective services case;~~
  - ~~2. Whenever there is a significant change in family circumstances or situations that might pose a new or renewed threat to child safety;~~
  - ~~3. Prior to reunification; and,~~
  - ~~4. Prior to supervisory approval for closing services.~~~~
- ~~B. Completion of the Colorado Safety Assessment Instrument is required for all Program Area 5 referrals being assessed, except:
 
  - ~~1. Institutional abuse assessments, as described in Section 7.202.55.~~
  - ~~2. Third party assessments, as described in Section 7.202.56.~~
  - ~~3. Fatality assessments when there are no surviving siblings.~~
  - ~~4. When caregivers have abandoned the child.~~
  - ~~5. When there is clear evidence that there is no incident of child abuse or neglect, documentation in the State automated case management system shall include the reason for making this decision, initial contact with the alleged victim, and person responsible for abuse or neglect.~~~~
- ~~C. The responses to the Colorado Safety Assessment Instrument shall be documented in the State automated case management system and shall identify any safety concerns that are or were present during the assessment. Documentation is required within thirty (30) calendar days from the date the referral was received.~~

**~~7.202.533 The Colorado Safety Assessment Instrument~~**

- A. ~~The following safety threshold criteria must be present to determine that a safety concern exists. Meeting these criteria indicates that the family's behavior, condition or situation threatens the safety of a child.~~
- ~~1. The threat to child safety is specific and observable.~~
  - ~~2. Conditions reasonably could result in moderate to severe harm to a child.~~
  - ~~3. This harm is likely to occur if not resolved.~~
  - ~~4. A child is vulnerable to the threat of harm due to his/her age, developmental level, cognitive impairment, physical disability, illness, ability to communicate, ability to meet basic needs, or similar factors.~~
  - ~~5. The caregiver(s) is unable to control conditions and behavior that threaten child safety.~~
- B. ~~County departments shall assess for child safety using the fifteen (15) standardized safety concerns. The fifteen standardized safety concerns are as follows:~~
- ~~1. Caregiver(s) in the home is out of control and/or violent.~~
  - ~~2. Caregiver(s) describes or acts toward child in predominately negative terms and/or has unrealistic expectations likely to cause moderate to severe harm.~~
  - ~~3. Caregiver(s) has caused harm to the child or has made a credible threat of harm.~~
  - ~~4. Caregiver(s)' explanations of injuries present are unconvincing.~~
  - ~~5. The caregiver(s) refuses access to the child or there is reason to believe that the family will flee.~~
  - ~~6. Caregiver(s) is unwilling or unable to meet the child's immediate needs for food, clothing, and shelter.~~
  - ~~7. Caregiver(s) is unwilling or unable to meet the child's significant medical or mental health care needs.~~
  - ~~8. Caregiver(s) has not or is unable to provide sufficient supervision to protect child from potentially moderate to severe harm.~~
  - ~~9. Child is fearful of caregiver(s), other family members, or other people living in, or having access to, the home.~~
  - ~~10. Child's physical living conditions seriously endanger the child's immediate health and safety.~~
  - ~~11. Caregiver(s)' alleged or observed substance use may seriously affect ability to supervise, protect or care for the child.~~
  - ~~12. Child sexual abuse is suspected and circumstances suggest that child safety is of immediate concern.~~
  - ~~13. Caregiver(s)' alleged or observed emotional instability, developmental delay or cognitive impairment seriously affects his/her ability to supervise, protect, or care for the child.~~
  - ~~14. Domestic violence exists in the home and places the child in danger of physical and/or emotional harm.~~
  - ~~15. Caregiver(s) has previously abused or neglected a child or is suspected of such, and the severity of the past maltreatment or caregiver's response to previous intervention suggests the child may be unsafe.~~
- C. ~~The list of safety concern definitions shall be referenced when assessing threats to child safety and prior to checking safety concerns in the Colorado Safety Assessment Instrument.~~
- D. ~~Safety Assessment Conclusion~~



1. ~~If none of the fifteen (15) safety concerns are identified at the conclusion of the safety assessment process, then it is reasonable to conclude that the child is safe and no further safety intervention is required.~~
2. ~~If assessment of the child and family determines that the child is safe and emergency out-of-home placement occurred prior to the completion of the safety assessment, efforts should be made to return responsibility for the child's safety back to the caregiver(s).~~
3. ~~If assessment of the child and family determines that the child is unsafe, analysis and planning are necessary.~~
4. ~~The caregiver protective capacity shall be assessed to determine whether a caregiver has the capacity and willingness to assure the child's protection and, if so, no further safety intervention is necessary. If the caregiver is unwilling or the protective capacity is insufficient to assure the child's protection, then further analysis and planning are necessary.~~

**E. ~~Safety Intervention Analysis~~**

~~To determine whether an in-home safety plan can sufficiently manage the safety concerns, consider and document how the following are met:~~

1. ~~The home environment is stable enough to support an in-home safety plan;~~
2. ~~Caregivers are willing to accept and cooperate with the use of an in-home safety plan; and,~~
3. ~~Resources are accessible and the level of effort required is available to sufficiently control safety concerns without it being necessary to rely on the person responsible for abuse/neglect to initiate protective actions.~~

**7.202.534 ~~Safety Planning and Documentation~~ [Rev. eff. 3/2/13]**

~~A. Safety plans do not have to be developed if the safety analysis results in a decision that out-of-home placement is the only plan that is sufficient to control safety concerns.~~

~~B. A safety plan shall be developed for all situations in which an in-home safety plan can reasonably be expected to control safety concerns. It shall be documented in the State automated case management system. All children in the household assessed to be unsafe shall be included in one plan.~~

~~C. Safety plans shall include the following:~~

1. ~~Safety responses that are the least restrictive response for assuring safety;~~
2. ~~Safety responses that have an immediate impact on controlling safety concerns;~~
3. ~~Description of actions to be taken that address each specific safety concern, including frequency of each action and who is responsible for each action;~~
4. ~~Safety response(s) that are readily accessible at the level required to assure safety;~~
5. ~~Identification of each family member and safety management provider participating in the plan;~~
6. ~~Parental acknowledgement of safety concerns and a willingness to participate in the safety plan; and;~~
7. ~~Caseworker activities to oversee the safety plan.~~

~~D. Parents, caregivers, and others who are a part of a safety plan shall sign the safety plan and receive a copy, and the signatures and paper form shall be retained in the file.~~

~~E. The safety plan shall be documented in the State automated case management system within thirty (30) calendar days from the date the referral was received.~~

**~~7.202.54 Colorado Family Risk Assessment [Rev. eff. 3/2/13]~~**

~~A. The assessment shall include use of the risk assessment instrument to:~~

- ~~1. Determine risk for future abuse or neglect, and~~
- ~~2. Aid in determining if case services should be provided, and~~
- ~~3. Aid in determining the appropriate level of case services.~~

~~B. The risk assessment instrument is required for all Program Area 5 assessments except:~~

- ~~1. Institutional abuse assessment,~~
- ~~2. Third party assessment,~~
- ~~3. Fatality assessment when there are no surviving siblings,~~
- ~~4. When caregivers have abandoned the child,~~
- ~~5. When the assessment determined no basis for the allegations.~~

~~C. The risk assessment instrument shall address the following factors:~~

- ~~1. Current type of allegation,~~
- ~~2. Previous child welfare assessments, services, and placement,~~
- ~~3. Number of children in household,~~
- ~~4. Age of youngest child in household,~~
- ~~5. Primary caregiver's description of incident,~~
- ~~6. Primary caregiver's provision of physical care or supervision,~~
- ~~7. Caregiver(s)' use of alcohol and controlled substances,~~
- ~~8. Characteristics of children in the household,~~
- ~~9. Recent or historical domestic violence in the household,~~
- ~~10. Caregiver(s)' history of homelessness and mental health treatment,~~
- ~~11. Primary caregiver's history of abuse or neglect as a child,~~
- ~~12. Caregiver(s)' use of excessive/inappropriate discipline,~~
- ~~13. Caregiver(s)' involvement in disruptive/volatile adult relationships.~~

~~D. The risk assessment instrument is to be completed in the State automated case management system within thirty (30) calendar days from the date the referral was received.~~

**~~7.202.55 Institutional Abuse or Neglect Investigations [Rev. eff. 3/2/13]~~**

~~Institutional abuse or neglect assessments shall:~~

- ~~A. Include those referrals of alleged child abuse or neglect by staff in any private or public facility that provides out-of-home child care, including twenty-four (24) hour care and child care homes and centers.~~
- ~~B. Not include abuse or neglect that occurs in public, private, and parochial schools and preschools operated in connection with those schools, except when those schools provide extended day services and abuse or neglect occurs during that time. Those instances shall be considered as institutional abuse and assessed accordingly.~~
- ~~C. Be the responsibility of the county department of social services in which the facility named in the referral is located and shall follow the High Risk Assessment track protocol.~~
- ~~D. Be conducted in those cases in which an allegation of abuse or neglect is made. A referral of a minor injury resulting from physical restraint shall not, by itself, require a full assessment unless there are surrounding circumstances that would indicate abusive or neglectful behavior by the care provider. Such circumstances include those referrals in which someone is specifically alleging the behavior to be abusive or those referrals in which there has been a pattern of frequent injuries by the same caretaker or of similar incidents in the same facility.~~
- ~~E. Be conducted by a qualified and disinterested party in those situations in which the county department is the supervisory agency, such as for certified county foster and group homes. Such an assessment shall be arranged for by the responsible county department with either another county department, another agency within the community who accepts delegated responsibility, or a disinterested and qualified staff person within the county department.~~
- ~~F. The county department shall assign priority in response time using the criteria set forth in Section 7.202.41, A.~~
- ~~G. Include notification within one working day after receipt of the referral to the licensing authority or certifying unit regarding the receipt of a child maltreatment referral in an out-of-home or day care setting.~~
- ~~H. Include in the referral as much of the following information as possible from the reporting party and records:~~
  - ~~1. Name, address and present specific location of the alleged child/ren victim(s).~~
  - ~~2. Child/ren's age and the nature and extent of the injuries~~
  - ~~3. Time, date, location and witness(es) of the incident.~~
  - ~~4. Any indication that other children in the institution are or have been injured, abused, neglected, and if so, their names addresses and current location.~~
  - ~~5. Any other information which might be helpful in establishing the cause of the injury, abuse and/or neglect.~~
  - ~~6. Name, address and telephone number of the institution and whether there is an after-hours telephone number for the institution.~~
  - ~~7. Name and address of the agency holding legal custody of the child/ren.~~
  - ~~8. Name and address of the child/ren's parent(s)/guardian(s).~~
  - ~~9. Name, address and present location of the person(s) alleged to be responsible for an incident of child abuse or neglect. If the person(s) is a staff person(s), determine if the person(s) is still on duty or off duty. If the person(s) is another resident, determine where he/she is at the time this information is obtained.~~
  - ~~10. Determine if the institution has been apprised of the allegation and if so, what action(s) may have been taken by the institution, such as:~~
    - ~~a. Notification of the custodial county/agency.~~

b. ~~Notification of the parent(s) guardians.~~

c. ~~Separation of the victim(s) from the alleged person responsible for child abuse or neglect.~~

d. ~~Provision of medical treatment, and if no medical treatment has been provided whether in the reporter's opinion, an injury was sustained which would constitute a medical emergency.~~

11. ~~Both historical and current information regarding the child/ren, the facility and the person(s) alleged to be responsible for the abuse or neglect.~~

I. ~~Be assessed in the following manner:~~

1. ~~Interview alleged victim/s~~

a. ~~Child/ren shall be interviewed in a setting which is as neutral as possible and where confidentiality can be maintained.~~

b. ~~Child/ren shall not be taken off the grounds for the interview unless the county department of social services has court ordered custody or law enforcement has taken the child into protective custody.~~

c. ~~Person(s) allegedly responsible for child abuse or neglect and other related parties (i.e., foster parents, spouse or other facility staff) shall not be allowed to be present during the interview with the child/ren.~~

d. ~~The county department of social services shall, if necessary, obtain a court order to access the child/ren if the facility refuses access.~~

e. ~~The assessing workers shall determine if there are other victims not named in the referral and shall immediately assess the safety of those victims.~~

f. ~~Names and addresses of any other alleged victims who may no longer be in the facility shall be obtained and interviewed, if appropriate.~~

2. ~~Interview witnesses, including children and staff.~~

3. ~~Interview other facility staff who may have additional information.~~

4. ~~Interview the person(s) allegedly responsible for abuse or neglect after the child/ren and witnesses have been interviewed by either law enforcement or social services.~~

5. ~~Obtain a detailed description of the incident and of the injuries and an assessment of the appropriateness of physical management/restraint if this was involved.~~

J. ~~Require notification of:~~

1. ~~Custodial agencies, including county departments, other states, and appropriate divisions of the Department of Human Services. Custodial agencies:~~

a. ~~Shall be notified immediately if there are safety issues or if an injury requires medical treatment.~~

b. ~~Shall be notified following completion of the assessment if the child in their custody was the subject of a referral or if the assessment reveals concerns regarding the child care practices which could negatively impact their child/ren.~~

2. ~~Licensing authority or certifying unit shall be notified the next working day if the assessment indicates there is an immediate threat to the child/ren's health, safety, or welfare.~~

3. ~~Parents/legal guardians of alleged victim(s). Notification shall occur:~~

- a. ~~By the custodial counties when alleged abuse occurs in out-of-home care setting.~~
  - b. ~~By the assessing county when there is no custodial county.~~
  - c. ~~By the assessing county when alleged abuse occurs in less than twenty-four (24) hour child care with notification provided prior to an interview with child/ren, where possible.~~
  - d. ~~When an assessment is being or has been conducted on a referral of abuse and/or neglect, and shall include the nature of the alleged abuse and the findings of the assessment.~~
  - e. ~~If circumstances do not allow for direct contact, then notification of the allegations and findings shall be provided in writing.~~
4. ~~Parents or legal guardians of uninvolved children in less than twenty-four (24) hour licensed child care settings shall be given notice of an assessment within seventy-two (72) hours when it has been determined by the State or county department that:~~
- a. ~~The incident of alleged child abuse or neglect that prompted the assessment is at the level of a moderate, severe, or fatal incident of abuse or neglect, as defined by rule at Sections 7.202.601, D, 1, b, c, d, and 7.202.601, D, 2, b, c, d, or involves sexual abuse;~~
  - b. ~~Notice to the parents or legal guardians of the uninvolved children is essential to the assessment of the specific allegation or is necessary for the safety of children cared for at the facility; and,~~
  - c. ~~A determination has been made and a State Department or county department supervisor has provided written approval of the determination for which basis and approval may be in electronic form.~~
5. ~~Director of facility:~~
- a. ~~Shall be apprised of the allegation.~~
  - b. ~~Shall be advised regarding the results of the assessment and provided a verbal report immediately once a determination is made. If the county department is unable to make a determination regarding the person(s) allegedly responsible for child abuse or neglect, the director shall also be advised so that decisions regarding the continued employment of the employee can be made by the facility.~~
- K. ~~Require the submission of a written report by the assessing county within sixty (60) calendar days after the initial receipt of the referral of child abuse or neglect.~~
1. ~~The report shall be sent to:~~
- a. ~~To the facility administrator/director.~~
  - b. ~~The agency with licensing/certifying authority.~~
  - c. ~~To the Institutional Abuse Review Team, the Department's twenty-four (24) hour monitoring team, and the Division of Child Care when the incident involves a twenty-four (24) hour care facility.~~
  - d. ~~To the same custodial counties as required in Subsection J, 1, above.~~
2. ~~The report shall include at a minimum the following information:~~
- a. ~~Name(s) of person(s) allegedly responsible for an incident of child abuse or neglect.~~
  - b. ~~The child's name, age, and length of time he/she has been in placement.~~

- c. ~~The name of the facility and the county in which it is located.~~
- d. ~~The name of director/administrator.~~
- e. ~~The approximate number of children served.~~
- f. ~~The age range of children served and type of children served (e.g., child with developmental disabilities).~~
- g. ~~A summary of what the assessment involved, including a list of the individuals interviewed.~~
- h. ~~A summary of findings/conclusions and the information on which they are based.~~
- i. ~~A summary of the recommendations and/or need for an identified corrective or remedial action.~~

#### **7.202.56 Third Party Abuse or Neglect Report Requirements [Rev. eff. 3/2/13]**

~~Third party abuse or neglect referrals shall:~~

- A. ~~Include any referrals of alleged abuse or neglect by a person who is not relating to the child in the contexts described in the previous intrafamilial or institutional abuse sections.~~
- B. ~~Be forwarded immediately by the county department to the appropriate law enforcement agency for screening and investigation in all referrals in which the abuse or neglect was by a third party age ten or over.~~

~~In those referrals in which child abuse or neglect is alleged to have occurred by a child under the age of 10, the county department shall be the agency responsible for the assessment. The assessment shall focus on:~~

- 1. ~~Whether or not the incident occurred;~~
- 2. ~~The entire situation including the actions or omissions of adults who are responsible for care of the children involved; and,~~
- 3. ~~Any interventions that may be necessary to secure safety and address treatment needs.~~

- C. ~~Be followed by receipt by the county department of a copy of the report summarizing the investigation that was conducted by law enforcement. The investigation report shall be the basis upon which the county department enters a founded finding of child abuse or neglect into the State automated case management system pursuant to Section 7.202.6.~~

#### **7.202.57 Conclusion of Investigation [Rev. eff. 3/2/13]**

- A. ~~A High Risk Assessment shall be completed within thirty (30) calendar days of the date the referral was received, unless there are circumstances which have prevented this from occurring. Such circumstances shall be documented in the State automated case management system.~~
  - 1. ~~The caseworker shall request and document in the assessment extension window of the State automated case management system the primary reason(s) for the extension prior to the expiration of the thirty (30) day closure requirement, and~~
  - 2. ~~The approving supervisor shall document within seven (7) calendar days in the assessment extension window of the State automated case management system the time limited extension(s) to the thirty (30) calendar days closure requirement including the rationale and the time frame for the extension(s).~~
- B. ~~In a Family Assessment Response, the assessment phase shall not exceed sixty (60) calendar days from the date the referral was received. Once services are identified or the assessment has reached sixty one (61) days, the Family Assessment Response is considered to be in the service phase, and a Family Assessment Response service plan shall be completed in collaboration with the family that identifies the~~

agreed-upon services, the steps to be accomplished in accessing services, by what party, and time frames for implementation.

- C. The county department shall document the completed assessment in the State automated case management system and supervisors shall approve the closure of the assessment.
- D. Services provided beyond sixty (60) calendar days of the receipt of the referral shall be open for services based on either the family's agreement to accept services or court order.
- E. Regardless of the outcome of the assessment and as allowable by law, the county department shall notify:
  - 1. The involved child's family of the outcome of the assessment;
  - 2. The person alleged to be responsible for the abuse or neglect of the outcome of the assessment; and,
  - 3. The specified mandatory reporting party, identified in Section 7.202.4, D, of the name of the child and the date of the referral; whether the referral was accepted for assessment; whether the referral was closed without services; whether the assessment resulted in services related to the safety of the child; the name of and contact information for the county caseworker responsible for the assessment; and the county procedure for requesting updated information within ninety (90)-calendar days after the county department received the referral.
  - 4. Where applicable, its local licensing unit, the director or administrator of the facility, the agency with licensing or certifying authority and the State Department of Human Services' Division of Child Welfare and Division of Early Care and Learning, if the abuse or neglect assessment involved a state-licensed or county-certified facility. Regardless of the track, the referral and assessment may be used for investigations and licensing action where the referral involves a licensed child care provider as defined in the Child Care Licensing Act.

**~~7.202.6 REQUIREMENTS CONCERNING COUNTY ENTRY OF FOUNDED FINDINGS OF CHILD ABUSE AND NEGLECT INTO THE STATE AUTOMATED CASE MANAGEMENT SYSTEM AND PROCESSES TO APPEAL THE FOUNDED FINDING [Rev. eff. 3/2/13]~~**

When the assessment of a referral of suspected child abuse or neglect results in a founded finding of child abuse or neglect by a preponderance of evidence, the county department shall enter the founded finding of child abuse or neglect into the State automated case management system no later than 60 calendar days after receipt of the referral, unless a county elects to implement Section 19-3-309.5, C.R.S., and defer entering a founded finding of child abuse or neglect into the State automated case management system, and enter into a pre-confirmation agreement (known as a safety plan agreement, as authorized pursuant to Section 19-3-309.5, C.R.S.).

- A. The county may follow the deferral process in the following circumstances:
  - 1. When the person has had no previous allegations of abuse or neglect assessed; and,
  - 2. When the child abuse or neglect that the person is found to be responsible for is at the level of minor incident of abuse or neglect, pursuant to Sections 7.202.601, D, 1, a and 7.202.601, D, 2, a; and,
  - 3. When the person and the county department decide on a mutually agreeable method for resolving the issues related to the referral; and,
  - 4. When the requirements set forth in the pre-confirmation agreement for resolving the issues related to the referral of child abuse or neglect can be completed within sixty days after the receipt of the referral.
- B. Counties are not obligated to enter into any agreements to defer entering a founded finding of child abuse or neglect into the State automated case management system.
- C. The pre-confirmation agreement shall be in writing and signed by the caseworker and the person found to be responsible for the abuse or neglect of the child, and reviewed by the supervisor.

- D. Upon deciding to enter into the deferral process, the county department shall document the decision in the State automated case management system.
- E. If the person who is found to be responsible for abuse or neglect completes the agreement, as determined by the county department, the county department shall make an individual finding of "deferred" with an overall finding of founded into the State automated case management system regarding the referral of child abuse or neglect related to the incident assessed.
- F. If the person who is found to be responsible for the abuse or neglect does not complete the agreement, as determined by the county department, the county department shall make an entry for the individual and overall finding of "founded" into the State automated case management system regarding child abuse or neglect related to the incident assessed.

#### **7.202.601 Definitions [Rev. eff. 3/2/13]**

In addition to the definitions set forth in Section 7.202.3, the following definitions are applicable to the submission of founded reports of abuse and neglect by the county department to the State Department.

- A. "Authorized caregiver", as used in these rules, means an individual or agency authorized by a parent, guardian or custodian to provide care to a child and who agrees to provide such care. The authorization may be on a temporary basis and need not be in writing unless otherwise required by law.
- B. "Child in need of services" includes a child who receives services regardless of whether the services are court-ordered, county provided or voluntarily arranged by the family, or a child who needs services even if the services are not provided.
- C. "Environment injurious to the welfare of a child" means that the environment caused injuries to the welfare of the child or reasonably could be foreseen as threatening to the welfare of the child and is in control of the parent, guardian, custodian or authorized caregiver.
- D. "Severity level" means the assessment of the harm to the child victim or the act of abuse or neglect as minor, moderate, severe or fatal as defined in these rules. Upon confirmation of the allegation(s) of abuse, neglect, or sexual abuse, the county department shall use the following definitions when determining the severity of the incidents:

##### **1. Physical Abuse**

- a. "Minor physical abuse" means excessive or inappropriate force used resulting in a superficial injury;
- b. "Moderate physical abuse" means excessive or inappropriate force used resulting in an injury that may require medical attention;
- c. "Severe physical abuse" means excessive or inappropriate force used resulting in a serious injury that requires medical attention or hospitalization;
- d. "Fatal physical abuse" means excessive or inappropriate force used resulting in a child's death.

##### **2. Neglect**

- a. "Minor neglect" means the physical or emotional needs of the child are marginally or inconsistently met, but there is little or no impact on the child's functioning;
- b. "Moderate neglect" means the physical or emotional needs of the child are inadequately met resulting in some impairment in the child's functioning;
- c. "Severe neglect" means the physical or emotional needs of the child are not met resulting in serious injury or illness;



d. "Fatal neglect" means the physical or emotional needs of the child are not met resulting in death.

3. Sexual abuse severity is to be determined based upon the type of contact, duration of contact, and the emotional impact upon the child.

#### **7.202.602 ~~Entering Founded Findings Reports of Child Abuse or Neglect [Rev. eff. 3/2/13]~~**

In a High Risk Assessment or non-dual track counties, the county department shall enter the founded finding even if there is a criminal or civil proceeding pending against the person responsible arising out of the same incident. The reported data shall include the following:

A. The name, address, gender, date of birth, and race of the child(ren) victim(s);

B. The composition of the victim's immediate family;

C. At a minimum, the name and last known mailing address of the person found to be responsible for the child abuse or neglect, and the date of birth and Social Security Number, if known;

D. The type of abuse or neglect;

E. The severity of the abuse or neglect;

F. Any previous incidents of child abuse or neglect of child or siblings;

G. The name(s) and address(es) of any person(s) responsible for previously founded abuse or neglect, if known;

H. The name of the source of the referral submitted to the county department, if known;

I. The county department that investigated the referral; and,

J. The date the suspected abuse or neglect referral was made to the county department and the date the county department made a founded finding of the abuse or neglect.

#### **7.202.603 ~~Notice to Law Enforcement and District Attorney [Rev. eff. 9/1/06]~~**

The county department shall notify the local law enforcement agency and the District Attorney's Office of the founded report. No other entity shall receive notification unless otherwise authorized by law.

#### **7.202.604 ~~Notice to the Person Found to be Responsible for Child Abuse or Neglect [Rev. eff. 3/2/13]~~**

A. The county department shall notify the person found responsible for child abuse or neglect of the finding by first-class mail to the responsible person's last known mailing address, using a form approved by the State Department. The county department shall retain a copy of the notice in the case file showing the date of mailing.

B. At a minimum, the notice shall include the following information:

1. The type and severity level of the abuse or neglect, the date the referral was made to the county department, which county department completed the assessment, the date the county made the finding in the State automated case management system, and information concerning persons or agencies that have access to the information.

2. The circumstances under which information contained in the State automated case management system will be provided to other individuals or agencies.

3. How to access the county's dispute resolution process. Counties are authorized to offer a county dispute resolution process to persons alleged to be responsible for an incident of child abuse or neglect.

4. ~~The right of the person found responsible to request a state level appeal as set forth in Section 7.202.605 through 7.202.608. The county shall provide the State Department approved appeal form to the person.~~
5. ~~Notice that the scope of the appeal is limited to challenges that the finding(s) are not supported by a preponderance of the evidence or that the actions found to be child abuse or neglect do not meet the legal definitions of child abuse or neglect. The State Department will be responsible for defending the determination at the State level fair hearing.~~
6. ~~A full explanation of all alternatives and deadlines contained in Sections 7.202.605 through 7.202.608.~~

#### **7.202.605 State-Level Appeal Process [Rev. eff. 3/2/13]**

- A. ~~Persons found responsible for an incident of child abuse or neglect by the county department shall have the right to a state level appeal to contest the finding. The request for appeal of the decision shall first be submitted to the State Department unit designated to handle such appeals. If the State Department and the Appellant are unable or unwilling to resolve the appeal in accordance with the provisions set forth below in this section, the State Department shall forward the appeal to the Office of Administrative Courts (OAC) to proceed to a fair hearing before an Administrative Law Judge (ALJ).~~
- B. ~~The grounds for appeal shall consist of the following:~~
  1. ~~The findings are not supported by a preponderance of credible evidence; or,~~
  2. ~~The actions ultimately found to be abusive or neglectful do not meet the statutory or regulatory definitions of child abuse or neglect.~~
- C. ~~The person found to be responsible for child abuse or neglect shall have ninety (90) calendar days from the date of the notice of founded finding to appeal the finding in writing to the State Department. The written appeal shall be submitted on the State approved form provided by the county and shall include:~~
  1. ~~The contact information for the Appellant;~~
  2. ~~A statement detailing the basis for the appeal; and,~~
  3. ~~The county department notice of finding of responsibility for child abuse or neglect.~~
- D. ~~The state level appeal process must be initiated by the person responsible for child abuse or neglect or his/her legal representative. The Appellant need not hire an attorney to appeal the county determination. If the individual is a minor child, the appeal may be initiated by his/her parents, legal custodian, or legal representative.~~
- E. ~~The appeal must be submitted to the State Department within ninety (90) calendar days of the date of the notice of founded finding. If the appeal is filed more than ninety (90) calendar days from the date of the notice of founded finding, the Appellant must show good cause for not appealing within the prescribed period as set forth in Section 7.202.3, E. Failure to request State review within this ninety-day period without good cause shall be grounds for the State Department to not accept the appeal.~~
- F. ~~The founded finding shall be utilized for safety and risk assessment, employment, and background screening by the State Department while the administrative appeal process is pending.~~
- G. ~~The Appellant shall have the right to appeal even if a dependency and neglect action or a criminal prosecution for child abuse is pending arising out of the same report. The State Department shall hold in abeyance the administrative process pending the outcome of the dependency and neglect or criminal action if requested by the Appellant or if the State Department determines that awaiting the outcome of the court case is in the best interest of the parties. If the Appellant objects to the continuance, the continuance shall not exceed one hundred eighty (180) days without the Appellant having the opportunity to seek review of the extended continuance by an Administrative Law Judge. The pendency of other court proceeding(s) shall be considered to be good cause to continue the appeal past the one hundred eighty (180) day timeframe.~~

- H. ~~The following circumstances shall be considered to be admissions to the factual basis of the finding of responsibility for child abuse or neglect entered into the State automated case management system and shall be considered to be conclusive evidence of the person's responsibility for child abuse or neglect to support a motion for summary judgment submitted to the Office of Administrative Courts:~~
- ~~1. When a Dependency and Neglect Petition has been adjudicated against or a deferred adjudication entered against the Appellant on the basis of Sections 19-3-103 or 19-3-102 (1)(a), (b), or (c), C.R.S., arising out of the same factual basis as the founded finding in the State automated case management system; or,~~
  - ~~2. The Appellant has been found guilty of child abuse, or has pled guilty or nolo contendere to child abuse as part of any plea agreement including, but not limited to, a deferred judgment agreement, arising out of the same factual basis as the founded finding in the State automated case management system.~~
  - ~~3. The Appellant has been found guilty or has pled guilty or nolo contendere to a domestic violence related or alcohol traffic related offense arising out of the same factual basis as the founded report in the State automated case management system.~~
- I. ~~When an Appellant requests an appeal, the State Department shall request the records relied upon in making the finding from the county department responsible for entering the finding, which has been appealed. The county department shall submit the record to the State Department as soon as practicable within the time frame requested by the Department.~~
- J. ~~After the Appellant requests an appeal, the State Department shall inform the Appellant regarding the details of the appeal process, including timeframes and contact information.~~
- ~~1. The Appellant, as the party in interest, shall have access to the county record in order to proceed with the appeal. Appellant's use of the county file for any other purpose is prohibited unless otherwise authorized by law.~~
  - ~~2. Prior to providing access to the Appellant, the State Department shall redact identifying information contained in the county file to comply with state and federal law regarding the confidentiality of child abuse or neglect records or other protected information including, but not limited to, reporting party name(s) and addresses, Social Security Number, foster parent identifying information, and information pertaining to other parties in the case that the appellant does not have a legal right to access.~~
- K. ~~The State Department is authorized to enter into settlement negotiations with the Appellant as part of the litigation process. The State Department is authorized to enter into settlement agreements that modify, overturn or expunge the reports as reflected in the State portion of the State automated case management system. The State Department is not authorized to make any changes in the county portion of the State automated case management system. In exercising its discretion, the State Department shall take into consideration the best interests of children, the weight of the evidence, the severity of the abuse or neglect, any pattern of abuse or neglect reflected in the record, the results of any local court processes, the rehabilitation of the Appellant, and any other pertinent information.~~
- L. ~~The State Department and the Appellant shall have one hundred twenty (120) days from the date that the State Department receives the appeal to resolve the issue(s) on appeal. The 120 day time limit may be extended by agreement of both the Appellant and the State Department if it is likely that the additional time will result in a fully executed settlement agreement or resolution of the appeal.~~
- M. ~~As soon as it is evident within the 120 days that the Appellant and the State Department will not resolve the issue(s) on appeal, the State Department shall forward a copy of the Appellant's original appeal document(s) to the Office of Administrative Courts in order to initiate the Office of Administrative Courts fair hearing process.~~
- N. ~~If, by the end of the 120 day period, the State Department has been unable to contact the Appellant using the information submitted by the Appellant, including by first class mail, and the Appellant has not contacted the State Department, the appeal shall be deemed abandoned. The finding entered by the county~~

department shall be upheld in the State automated case management system without further right of appeal. The State Department shall notify the Appellant of this result by first class mail to the address submitted by the Appellant.

**7.202.606 ~~State Fair Hearing Before the Office of Administrative Courts [Rev. eff. 3/2/13]~~**

A. ~~When the Office of Administrative Courts receives the appeal documents from the State Department, the Office of Administrative Courts shall docket the appeal and enter a procedural order to the parties indicating the following:~~

- ~~1. The date and time for a telephone scheduling conference with the parties.~~
- ~~2. During the telephone scheduling conference, the Office of Administrative Courts shall determine the date for the hearing. Following the scheduling conference, the Office of Administrative Courts will issue a further procedural order and notice of hearing. The order/notice will contain the hearing date, the fourteen (14) day deadline for the notice of issues, the fourteen (14) day deadline for response and deadline for filing pre-hearing statements. Any party requiring an extension or modification of any of the deadlines in the order may file a request with the Administrative Law Judge.~~
- ~~3. The notice of issues shall include the following:~~
  - ~~a. The specific allegations(s) that form the basis of the county department's finding that the Appellant was responsible for child abuse or neglect;~~
  - ~~b. The specific type and severity of child abuse asserted against Appellant and the legal authority supporting the finding; and,~~
  - ~~c. To the extent that the State Department determines that the facts contained in the State automated case management system support a modification of the type or severity of child abuse or neglect determined by the county department, the State Department shall so notify the county department and the Appellant of that modification and the process shall proceed on the modified finding(s).~~
- ~~4. The Appellant shall respond to the State Department's submittal by providing the factual and legal basis supporting the appeal to the State Department and to the Office of Administrative Courts.~~
- ~~5. If the Appellant fails to participate in the scheduling conference referenced above or fails to submit the response referenced herein, the Office of Administrative Courts shall deem the appeal to have been abandoned by the Appellant and render an Initial Decision Dismissing Appeal. In accordance with the procedures set forth below, the Office of Appeals may reinstate the appeal for good cause shown by the Appellant.~~
- ~~6. In the event that either party fails to respond to a motion to dismiss filed in the appeal, the Administrative Law Judge shall not consider the motion to be confessed and shall render a decision based on the merits of the motion.~~

B. ~~The Administrative Law Judge shall conduct the appeal in accordance with the Administrative Procedure Act, Section 24-4-105, C.R.S. The rights of the parties include:~~

- ~~1. The State Department shall have the burden of proof to establish the facts by a preponderance of the evidence and that the facts support the conclusion that the Appellant is responsible for the child abuse or neglect indicated in the notice of issues provided by the State Department. The State automated case management system is not the only acceptable evidence for establishing that the finding is supported by a preponderance of evidence;~~
- ~~2. Each party shall have the right to present his or her case or defense by oral and documentary evidence, to submit rebuttal evidence, and to conduct cross-examination;~~

3. Subject to these rights and requirements, where a hearing will be expedited and the interests of the parties will not be subsequently prejudiced thereby, the Administrative Law Judge may receive all or part of the evidence in written form or by oral stipulations;
4. A telephonic hearing may be conducted as an alternative to a face-to-face hearing unless either party requests a face-to-face hearing in writing. The written request for a face-to-face hearing must be filed with the Office of Administrative Courts and the other party at least ten (10) calendar days before the scheduled hearing. A request for a face-to-face hearing may necessitate the re-setting of the hearing; and,
5. Where facilities exist that have videoconferencing technology local to the county department that made the founded finding, either party may request that the hearing be conducted via that technology. The requesting party shall investigate the feasibility of this approach and shall submit a written request outlining the arrangements that could be made for video conference. The Office of Administrative Courts shall hold the hearing via videoconferencing for the convenience of the parties whenever requested and feasible. A request for a hearing via videoconferencing may necessitate the re-setting of the hearing.

- C. At the conclusion of the hearing, unless the Administrative Law Judge allows additional time to submit documentation, the Administrative Law Judge shall take the matter under advisement. After considering all the relevant evidence presented by the parties, the Administrative Law Judge shall render an Initial Decision for review by the Colorado Department of Human Services, Office of Appeals.
- D. The Initial Decision shall uphold, modify or overturn/reverse the county finding. The Administrative Law Judge shall have the authority to modify the type and severity level of the child abuse or neglect finding to meet the evidence provided at the hearing. The Administrative Law Judge shall not order the county to modify its record; rather, the State Department shall indicate the outcome of the appeal in its portion of the State automated case management system.
- E. When an Appellant fails to appear at a duly scheduled hearing having been given proper notice, without having given timely advance notice to the Office of Administrative Courts of acceptable good cause for inability to appear at the hearing at the time, date and place specified in the notice of hearing, then the appeal shall be considered abandoned and the Administrative Law Judge shall enter an Initial Decision Dismissing Appeal. In accordance with the procedures set forth in Section 7.202.608, the Office of Appeals may reinstate the appeal for good cause shown by the Appellant.

#### **7.202.607 Transition to the New Appeal Process [Rev. eff. 3/2/13]**

- A. On or after March 31, 2011, all new appeals shall be submitted to the Colorado Department of Human Services section authorized by the Executive Director to process these appeals, using the State approved appeal form provided to individuals who have been found responsible for an incident of child abuse or neglect.
- B. If an individual submits a request for a record review or a fair hearing directly to the Office of Administrative Courts on or after March 31, 2011, the Office of Administrative Courts shall not begin to process that appeal and shall, instead, transfer the appeal request to the Colorado Department of Human Services section authorized by the Executive Director to process these appeals.
- C. If an individual requested a fair hearing before an Administrative Law Judge prior to the effective date of these rules, that appeal shall continue in accordance with the rule provisions in effect at the time that the request was received by the Office of Administrative Courts.
- D. If an individual requested a record review by an Administrative Law Judge prior to the effective date of these rules and the matter has not yet reached the decision stage by the Administrative Law Judge, the individual shall be notified that she/he has the option of requesting the Department to process the appeal under the revised process.

#### **7.202.608 State Department Office of Appeals Functions [Rev. eff. 3/2/13]**

- A. Review of the Initial Decision and hearing record and entry of the Final Agency Decision shall be pursuant to State rules at Sections 3.850.72 – 3.850.73 (9 CCR 2503-8).

- ~~B. Review shall be conducted by a State adjudicator in the Office of Appeals not directly involved in any prior review of the county report being appealed.~~
- ~~C. The Final Agency Decision shall advise the Appellant of his/her right to seek judicial review in the State District Court, City and County of Denver, if the Appellant had timely filed Exceptions to the Initial Decision.~~
- ~~D. If the Appellant seeks judicial review of the Final Agency Decision, the State Department shall be responsible for defending the Final Agency Decision on judicial review.~~
- ~~E. In any action in any court challenging a county's founded finding of child abuse or neglect, the State Department will defend the statutes, rules, and state-mandated procedures leading up to the finding, and will defend all county actions that are consistent with statutes, rules, and state-mandated procedures. The State Department shall not be responsible for defending the county department for actions that are alleged to be in violation of, or inconsistent with, state statutes, state rules or state-mandated procedures.~~

#### **~~7.202.609 Confidentiality of Appeal Records [Rev. eff. 9/1/06]~~**

- ~~A. All records submitted by the parties as part of the State-level appeal process and all notices, orders, agency notes created by or made part of the State Department's agency record shall be confidential and shall not be released or disclosed unless such release or disclosure is permitted by the applicable State statutes or Section 7.000.72 (12 CCR 2509-1).~~
- ~~B. Initial and Final Agency Decisions where information identifying the Appellant, victim(s), other family members, or other minors have been blocked out may be released to the public.~~

#### **~~7.202.61 Child Protection Teams [Rev. eff. 3/2/13]~~**

~~A county department of social services receiving fifty (50) or more referrals of child abuse and neglect per year shall have a multi-disciplinary child protection team in accordance with Sections 19-1-103(22) and 19-3-308(6), C.R.S.~~

#### **~~7.202.62 Provision of Ongoing Child Protection Services (CPS) [Rev. eff. 3/2/13]~~**

- ~~A. If a safety plan exists, the assigned caseworker and supervisor shall review it as the first step in ongoing services planning.~~
- ~~B. Ongoing child protection services shall be based on the safety and risk issues identified in the safety assessment instrument and plan, risk assessment instrument, and in the family social history and assessment summary in the Family Services Plan. Services shall be provided to protect the child(ren) or youth from further abuse or neglect through building parental capabilities and increasing parental involvement. This shall be accomplished in a manner that preserves the family when this can safely be done. When the family from whom the child(ren) or youth were removed cannot safely be preserved, services shall be provided that preserve the child(ren)'s or youth's continuity within the extended family and/or home community when feasible. When the child(ren) or youth cannot safely return to the family from whom they were removed, services shall be provided to achieve an alternative permanent plan that provides for a child(ren)'s or youth's safety and well-being in a timely manner.~~
- ~~C. At the point of case transfer, county departments shall assure that pertinent information regarding child safety, permanency, and well-being are translated to the new assigned caseworker. This shall be accomplished through any of the following methods, in a descending order of preference, based on the nature of the case and the workload ability of the county department:
 
  - ~~1. Decision-making meeting involving caseworkers and/or supervisors, family and community providers.~~
  - ~~2. Staffing between caseworkers and/or supervisors.~~
  - ~~3. Written transfer summary.~~~~
- ~~D. The county department shall complete the safety assessment instrument consistent with requirements outlined in Section 7.202.53.~~

~~E. The county department shall complete the Colorado Family Risk Assessment instrument prior to case closure on all Program Area 5 cases for which remaining at home or reunification was the permanency goal identified in the State automated case management system. The Colorado Family Risk Assessment instrument shall be documented in the State automated case management system and address the following factors:~~

- ~~1. Prior assessments;~~
- ~~2. Household has previously received child protective services;~~
- ~~3. Number of children or youth in the household;~~
- ~~4. Age of youngest child in the household;~~
- ~~5. New assessments since the initial risk assessment;~~
- ~~6. Either caregiver has a current substance use problem;~~
- ~~7. Disruptive/volatile adult relationships in the household;~~
- ~~8. Caregiver's ability to provide physical care/supervision to children or youth;~~
- ~~9. Primary caregiver's use of treatment/training programs; and,~~
- ~~10. Secondary caregiver's use of treatment/training programs.~~

~~All of the information from the risk assessment and risk reassessment instruments shall be used to assess the degree to which parental capacities have been enhanced, risks reduced, and links to the community have been established in order to support case closure.~~

~~F. Monthly Contact~~

~~The primary purpose for case contacts shall be to assure child safety and well-being and move the case toward achieving identified treatment goals. Documentation in the State automated case management system of at least one monthly contact shall summarize progress toward these goals. In child protection cases in which the children or youth remain in the home and in child protection cases in which the children or youth are placed out of the home, the county department shall have face-to-face and telephone contact with the children or youth and parents and relevant collateral contacts as often as needed (while meeting the minimum expectations below) to reasonably attempt to assure the safety, permanency and well-being of the children.~~

- ~~1. A face-to-face contact with a parent, or the guardian to whom the child or youth shall return, or with a child or youth is defined as an in-person contact for the purpose of observation, conversation, intervention or interview about substantive case issues, such as safety, risk and needs assessment, safety and treatment planning that may help to reduce future risk of abuse and neglect, service agreement development and/or progress.~~
- ~~2. The primary purposes for county department contacts with parents are to assess the parent(s)' ability to provide safety for the child or youth and make progress toward treatment plan goals. When a child protection case remains open with the county department, the county department shall maintain sufficient contact with parents or the guardian with whom the child or youth resides, or to whom the child or youth shall return, to lead to timely resolution of child safety issues and to move the case toward timely resolution of treatment plan goals. Such contact shall occur at least monthly and at least every other month there shall be face-to-face contact. Such contacts shall occur with parents at least until a motion for termination of parental rights is filed, in cases in which the child is not living in the home or in which it is no longer planned that the child will return home.~~
- ~~3. The primary purpose for child or youth contacts is to assure the child's safety and well-being regardless of the reason the case is open with the county department. For in-home cases, the county~~

department shall have at least monthly face-to-face contact with children or youth participating as a child in the case.

4. For the frequency of contact of children and youth in out-of-home placement, see Section 7.001.6, B (12 CCR 2509-1).

5. For all other types of contacts, the purpose of the contacts shall be determined by the stage of the case, by the level of safety, risk and needs of the case, and according to whether or not the county department representative is the primary service provider. In cases in which there are individuals and/or someone from another or other agencies who has/have the primary therapeutic relationship with the parent and/or the child or youth, these parties may be designated by the county department to fulfill additional contacts beyond the minimum contacts described above when additional contacts are needed to reasonably assure the safety, permanency and well-being of the child(ren) or youth in the case.

6. All case contacts with parents and child(ren) or youth by the county department shall be recorded in the State automated case management system, and shall reflect how the purpose of the visit was accomplished.

7. In exceptional situations, if the minimum case contacts are not able to be provided by the county in any given month, those reasons shall be documented by the county in the case file.

8. If direct contact is impossible due to the child's location, the following information shall be documented in the State automated case management system indicating:

a. The case circumstances, including why the direct contact is not possible.

b. How the contact shall occur.

c. How the county department shall monitor progress.

9. All case contacts by parties designated by the county department, beyond the minimum contacts described above, to provide assessment, treatment and/or monitoring of the parents and children or youth, shall be recorded in the case file. The county department shall have the responsibility to determine that such needed contacts have occurred.

G. The county department shall provide courtesy supervision services when requested by another county or state when there is court jurisdiction and such services must continue in order to protect the child or youth. In cases where there is no court jurisdiction, the receiving county shall conduct an assessment to determine if services are needed in order to protect the child or youth. Services shall be provided if indicated. Other services include:

1. The requirement to utilize Interstate Compact on the Placement of Children (ICPC) procedures to obtain courtesy supervision shall not be used by a county to deny a request from another state to provide assessment of a child's safety.

2. When there is court jurisdiction, Interstate Compact on the Placement of Children procedures shall be followed by the sending state in order to obtain courtesy supervision of a case in Colorado.

3. The contacts requirements in Section 7.202.62, F, shall apply to cases being provided courtesy supervision when there is court jurisdiction and also for voluntary cases for which it is determined that services are indicated.

H. If a child protection service client for whom services are still needed moves to another county or state, the county or state of current residence should be notified within ten days and provided with written appropriate, relevant information. Change in venue procedures as outlined in Section 7.304.4 (12 CCR 2509-4), shall be followed. If there is no court order for services, the receiving county shall provide outreach and assessment services up to sixty (60) calendar days. If during the sixty calendar days period it is determined that further services are not indicated or the family is unwilling to accept services, the receiving county shall close the case.



- I. All Program Area 5 cases shall remain in that Program Area as long as the child or youth is at risk for abuse/neglect and the case plan is to reunify the family. Cases on appeal for termination of parent-child legal relationship shall remain in Program Area 5 until the termination is finalized.

## **7.202.7 SPECIAL CATEGORIES OF INVESTIGATIONS**

### **7.202.71 Assessment of Referrals of Medical Neglect of Infants with Disabilities [Rev. eff. 3/2/13]**

#### **Definitions**

- A. "Withholding of Medically Indicated Treatment"—means the failure to respond to the infant's life-threatening conditions by providing treatment (including appropriate nutrition, hydration, and medication) that, in the treating physician's reasonable medical judgment, will be most likely to be effective in improving or correcting all such conditions. The term does not include, however, the failure to provide treatment to an infant (other than appropriate nutrition, hydration or medication) when, in the treating physician's (or physicians') reasonable medical judgment any of the following circumstances apply:
1. The infant is chronically and irreversibly comatose;
  2. The provision of treatment would merely prolong dying, not be effective in improving or correcting all of the infant's life-threatening conditions, or otherwise be futile in terms of the survival of the infant;
  3. The provision of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane.
- B. "Reasonable Medical Judgment"—is a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.
- C. "Infant with a Disability"—is a child less than one year of age who was born with a life-threatening condition and who may have additional non-lethal physical or mental disabilities. The definition includes children over the age of one year who have been continuously hospitalized since birth, who were born extremely premature, or who have a long-term disability. These procedures do not imply that treatment should be changed or stopped when an infant reaches one year of age. The primary population to be addressed in these regulations is that of the hospitalized infant. Any other situations involving medical neglect of children will be provided for under the existing protections of the Colorado Children's Code regarding medical care of children.
- D. "Designated Hospital Liaison"—is the person named by the hospital or health care facility to act as the contact with the county department in all aspects of cases of suspected withholding of medically indicated treatment from infants with disabilities and with life threatening conditions.
- E. "Hospital Review Committee (H.R.C.)"—is an entity established to deal with medical and ethical dilemmas arising in the care of patients within a hospital or health care facility. Where they exist, the committee may take many organizational forms, such as an "infant care review committee" or an "institutional bioethics committee." The functions for a committee may differ from institution to institution, including the authorization to review and recommend treatment in specific cases.

### **7.202.72 County Procedures for Assessment of Referrals of Medical Neglect of Infants with Disabilities [Rev. eff. 3/2/13]**

- A. The county department responsible for coordinating the assessment of a referral of medical neglect shall be the county in which the parents of the hospitalized infant reside. If the parent's residence cannot be determined, the county department in which the hospital is located shall assume responsibility.
- B. The county department shall work with medical organizations, hospitals, and health care facilities to implement procedures that ensure a timely response and resolution of referrals of medical neglect. To that end, it shall contact each appropriate health care facility in the county to obtain the name, title, and telephone number of the designated hospital liaison. At least annually, this information is to be updated by the county department. The county department also shall be responsible for coordination with any existing hospital-

review committees, which may have evaluated and recommended treatment in the case under assessment.

- ~~C. County department staff assigned to the assessment of a medical neglect referral shall make no medical decisions regarding the infant and shall seek an independent medical consultation when indicated.~~

~~Should the parent(s) wish to seek a second medical opinion, the county department shall provide referral assistance.~~

~~If the county department finds that an independent medical evaluation is necessary to determine the infant's medical prognosis, the county department shall recommend to the parent(s) of an infant with a disability that an independent medical evaluation be done.~~

- ~~D. In all medical neglect referrals, the county department shall obtain all relevant medical data concerning the child. The county department shall seek a court order to obtain records if the request for such material is refused.~~

- ~~E. The county department shall advise promptly the State Division of Child Welfare Services of all medical neglect referrals involving infants with disabilities. The contact persons at the State will be the Child Protection Specialists.~~

- ~~F. If after assessing the medical neglect referral there are indications that the referral of medical neglect may be founded, the county department shall interview the parent(s).~~

- ~~G. If the county department determines that medically indicated treatment or palliative care is being or will be withheld, and (1) the child's condition requires an urgent response, or (2) efforts by county department or hospital personnel to obtain parental consent to treatment would be futile or already have failed, then the matter shall be brought to court under a petition. The petition shall be a request to the court to place temporary custody of the child with the county department to ensure proper medical treatment is provided. The county department shall immediately contact the department's attorney when such a court order is required.~~

- ~~H. In cases in which the infant has died before the assessment is completed and the county department has reason to suspect that medically indicated treatment was withheld, the matter shall be referred to the law enforcement agency in the location where the child died. If it is determined that treatment was not medically indicated, or that medically indicated treatment had not been withheld, then the report shall be deemed unfounded.~~

#### **7.202.73 Ongoing Services for Cases of Medical Neglect of Infants with Disabilities**

The county department shall make available the following services:

##### **A. Monitoring Court-Ordered Treatment**

~~When either the court has ordered or the parent(s) have agreed upon a course of treatment, the county department shall monitor developments to ensure this treatment is provided. When there is a failure to provide treatment, the county department shall notify the court and immediately petition the court to take appropriate action.~~

##### **B. Coordinating With Other Resources**

~~The county department shall contact agencies that provide services to child/ren with special needs, and help the parents with referrals to appropriate agencies that provide services for infants with similar disabilities and for their families. Referrals shall be made to agencies with financial resources for costs of medical and rehabilitative services. Information shall be provided regarding parental support groups and community educational resources. This information shall be made available, as is deemed appropriate under the circumstances, whether the county department has taken legal action or not.~~

#### **7.202.74 Assessment of Medical Neglect in Which Religious Considerations are Involved [Rev. eff. 3/2/13]**

- ~~A. The county department shall assess cases of medical neglect including those cases in which there is a failure to provide medical treatment based upon the parent's, guardian's, or custodian's religious beliefs and there is concern that such failure will result in a threat to the child's health and welfare.~~
- ~~B. The county department shall obtain a medical evaluation if the child's condition presents substantial concern for the child's health and welfare. This evaluation shall be obtained with the consent of the parents, guardians, or legal custodians. If such consent is refused, the county department shall seek a court order to obtain a medical evaluation.~~
- ~~C. In consultation with medical practitioners, the county department shall consider whether the condition is life-threatening or will result in serious disability without professional medical care.~~
- ~~D. If the child's condition is determined to be life-threatening or could result in serious physical impairment, the county department shall seek a court order to ensure the provision of the necessary medical care in the event that such care is refused by the parent, guardian, or legal custodian.~~
- ~~E. Additionally, in those cases in which there is spiritual healing involved, the county department shall follow the guidelines defined in Section 19-3-103(2)(a), (b), C.R.S., to decide whether the method is a "recognized" method of religious healing and whether such healing is considered to be medically effective for the child's condition.~~
- ~~F. If it is determined that the situation is life-threatening or will result in serious disability without professional medical care, the county department shall contact the court for an order providing medical treatment for the child.~~
- ~~G. For purposes of entering founded findings of abuse or neglect into the State automated case management system, reporting to police for criminal investigation, and filing of dependency and neglect petitions, no child who is under treatment by a recognized method of religious healing shall, for that reason alone, be considered to have been neglected or dependent unless the child's parent, legal guardian, or custodian inhibits or interferes with the provision of medical services according to court-ordered medical evaluation or treatment.~~

If a parent, guardian, or legal custodian inhibits or interferes with the provision of medical evaluation or treatment according to a court order, that act would constitute "neglect" and in such circumstances a referral shall be made to law enforcement and the county department of social services may file a dependency and neglect petition.

#### **7.202.75 Assessment, Reporting, and Review of an Incident of Egregious Abuse or Neglect Against a Child, a Child Near Fatality, or a Child Fatality [Rev. eff. 3/2/13]**

"Incident of egregious abuse or neglect" means "an incident of suspected abuse or neglect involving significant violence, torture, use of cruel restraints, or other similar, aggravated circumstances that may be further defined in rules promulgated by the State Department pursuant to this section" (Section 26-1-139(2)(a), C.R.S.).

"Near fatality" means a case in which a physician determines that a child is in serious, critical, or life-threatening condition as a result of sickness or injury caused by suspected abuse, neglect or maltreatment (Section 26-1-139(2)(b), C.R.S.).

The county department shall conduct a High Risk Assessment of incidents of egregious abuse or neglect against a child, a near fatality, or a child fatality in intrafamilial and institutional settings in those cases in which:

- ~~A. There is reason to know or suspect that abuse/or neglect caused or contributed to the egregious abuse or neglect against a child, a child near fatality, or a child fatality.~~
- ~~B. The cause of the incident of egregious abuse or neglect, near fatality or fatality is unknown or the information given is not consistent with the degree or type of injury and/or subsequent death.~~

#### **7.202.76 Assessment Procedures [Rev. eff. 10/1/12]**

- ~~A. The county department shall coordinate with the following agencies: law enforcement, district attorney's office, coroner's office, and hospitals to ensure prompt notification of an incident of egregious abuse or neglect, near fatality, or fatality of a child, which is suspicious for child abuse or neglect.~~
- ~~B. Assessments shall be coordinated with law enforcement. At a minimum in cases in which there are no surviving children, the county department shall provide law enforcement and the coroner with information related to any prior involvement with the child, the family, or the alleged perpetrator.~~
- ~~C. When there are surviving or non-injured child/ren, the county department shall assess the condition of those child/ren and shall take the action necessary to ensure their protection.~~
- ~~1. When assessing the condition of surviving or non-injured child/ren who may be at risk, the assessment shall include the following activities:~~
    - ~~a. A visit to the child/ren's home or place of custody.~~
    - ~~b. An interview and/or evaluation of the child/ren.~~
    - ~~c. An examination of the child/ren to include an assessment of the child/ren's overall current physical, mental, or emotional condition.~~
    - ~~d. An assessment of the safety of the home environment, to include an interview with the parents, guardians, and/or legal custodians.~~
  - ~~2. When there are reasonable grounds to believe that a surviving or non-injured child is at risk of emotional or physical harm in his/her home environment, the county department shall seek an emergency protective order.~~

#### **7.202.77 Reporting to the State [Rev. eff. 10/1/12]**

- ~~A. Within 24 hours (excluding weekends and holidays) of a county acceptance of a referral of an incident of egregious abuse or neglect, near fatality or fatality of any child, which is suspicious for child abuse or neglect, the county department shall call or email the following information to the State Department Child Protection specialist or designee. The following information shall be documented on the State prescribed form:~~
- ~~1. Name and age of victim.~~
  - ~~2. The Trails referral ID number.~~
  - ~~3. Known circumstances around the incident of egregious abuse or neglect, near fatality or fatality.~~
  - ~~4. Description of physical injuries or medical condition of the child/ren at the time of referral.~~
  - ~~5. Names and ages of surviving or non-injured child/ren who may be at risk.~~
  - ~~6. Brief description of the department's prior involvement with the family/caretaker, if any.~~
  - ~~7. Actions taken by the county department to date and future actions to be taken.~~
  - ~~8. Involvement of other professionals in the case.~~
- ~~B. Upon notification of an incident of egregious abuse or neglect, near fatality or fatality, the county department shall restrict Trails access to the current assessment of the incident of egregious abuse or neglect, near fatality or fatality, and any other Trails history regarding this child, the child's family members, and the person(s) suspected of the abuse or neglect. Access shall remain restricted until the conclusion of the State child fatality review, at such time the county department shall determine whether the records shall be unstricted.~~

C. The county department shall provide the following information to the State Department's Child Protection specialist within sixty (60) calendar days of notification of the incident of egregious abuse or neglect, near fatality or fatality, to the extent possible, and no longer than sixty (60) calendar days without a written request from the county for an extension and subsequent State Department approval granting an extension:

1. The completed Trails referral/assessment summary.
2. Copies of any pertinent social, medical, and mental health evaluations of all involved subjects (child/ren, family, caretakers, etc.).
3. Coroner's records, including autopsy report.
4. Police reports of present investigation as well as any prior criminal history of all subjects.
5. A copy of the case record not obtainable in Trails, if the county department has had past or current contact with the child prior to the incident of egregious abuse or neglect, near fatality or fatality.
6. Report of county department internal review, if the county department had previous contact with any of the household members in the previous two years.

**7.202.78 Additional Actions When County Department has had Prior/Current Child Welfare Involvement [Rev. eff. 10/1/12]**

A. When the county department has custody of the child and or protective supervision, it shall take the following actions:

1. Immediately notify the parent/caretaker of the incident of egregious abuse or neglect, near death or death of the child. If the parent/caretaker resides in another county or state, the county department shall coordinate with the county department of parents' or caretakers' residence to provide, whenever possible, personal notification.
2. Immediately notify the county department director of the incident of egregious abuse or neglect, near death or death of a child in the department's custody, protective supervision, or when the department has had prior child welfare involvement within the last two years that was directly related to the incident of egregious abuse or neglect, near fatality or fatality to include referrals that have been screened out. A complete copy of the child's case record shall be made available to the county director within twenty-four (24) hours of notification.
3. Immediately notify the court, the attorney for the county department, and the Guardian Ad Litem (when one has been assigned) of the incident of egregious abuse or neglect, near death or death of any child who is under the court's jurisdiction.

B. Upon notification of a child fatality in which the county department has had prior child welfare involvement, within the last two years that was directly related to the fatality, with the child, family, or alleged perpetrator, the county department director shall take the following actions:

1. Designate an individual(s) who will be responsible for assessing the child's death. The assigned individual(s) shall not have had prior involvement in the case. In the event of a conflict of interest, the county department shall arrange for the assessment to be conducted by another county department of social services with personnel having appropriate training and skill.
2. Ensure that a complete internal administrative review of the county's involvement in the case before the child's death is conducted. This review shall be referred to as the Department Internal Review and shall be completed whenever the county department has had current or prior child welfare involvement with the child, family or alleged perpetrator, within the last two years. The Review shall include, at a minimum:
  - a. Assessment of the interventions made by the county department.

- ~~b. Evaluation of the case plan.~~
- ~~c. Identified areas of strengths and/or weaknesses in the casework process.~~
- ~~d. Analysis of any systemic issues that may have led to delays or oversights.~~
- ~~e. Evaluation of the role played by other community agencies and the overall case coordination.~~
- ~~f. Recommendations for staff training or changes in the system that would avoid other similar occurrences.~~

~~3. Submit a written report of the Department Internal Review within sixty (60) calendar days of notification of the child's death to the State Department Child Protection specialist.~~

~~C. If another county department also has had prior child welfare involvement with the child, family or alleged perpetrator, within the two-year period directly related to the incident of egregious abuse or neglect, near fatality or fatality (to include referrals that had been screened out), the State Department shall decide what reviews shall occur in that county department.~~

**~~7.202.8 STATE REVIEWS OF AN INCIDENT OF EGREGIOUS ABUSE OR NEGLECT AGAINST A CHILD, NEAR FATALITY OR CHILD FATALITY [Rev. eff. 10/1/12]~~**

~~When a county department determines an incident of egregious abuse or neglect, near fatality or fatality of any child, which is suspicious for child abuse or neglect, occurs, the county shall submit reports for review by the State Department in accordance with Sections 7.202.77 and 7.202.78 of this rule manual, and cooperate with the State Department's review. The State Department shall conduct a multidisciplinary review of such cases, where the county was involved in the two years prior to the incident of egregious abuse or neglect, near fatality or fatality and the prior involvement was directly related. The State Department Child Fatality Review shall occur within thirty (30) days of the State Department receiving all required documentation, in accordance with Section 7.202.77, C.~~

## **7.200 PROGRAM AREAS, CASE CONTACTS, AND ONGOING CASE REQUIREMENTS**

### **7.200.1 PROGRAM AREA 3 - PROGRAM FOR PREVENTION AND INTERVENTION SERVICES FOR CHILDREN, YOUTH, AND FAMILIES AT RISK OF INVOLVEMENT WITH CHILD WELFARE**

The Program Area 3 definition is located at 7.000.1, A.

- A. Prevention services are voluntary and based on a human services professional decision regarding the family's need and on youth and family choice. Services may include:
1. Services that reduce risk and increase protective factors to decrease the likelihood of child abuse and neglect; or,
  2. Services provided when a child or youth is in conflict with his/her family members, community, or at risk for abuse or neglect and do not meet the definition of unsafe as found in Section 7.202.3.
- Services cannot be provided when the child's circumstance meets the definition of unsafe as found in Section 7.202.3.
- B. Intervention services are voluntary and based on a human services professional decision regarding the family's need and youth and family choice. Services may include:
1. Proactive efforts to intervene when the immediate health, safety or well-being of a child is not at-risk; or,
  2. Services provided after a referral has been screened out; or,
  3. Services provided when a case is assessed as not requiring child protection or youth in conflict services and the case is closed; or,
  4. Services provided when a child welfare case has been closed, the child is safe as defined in section 7.202.3, and additional supports would improve a family's protective factors and reduce the possibility of recurrence of abuse or neglect.

#### **7.200.11 Eligibility Criteria**

##### **A. County Department**

A county is eligible to provide Program Area 3 prevention and intervention services when the county has a state-approved service delivery plan. The service delivery plan shall be submitted as an addendum to the Core Services Plan and shall include the process for referral and assessment to the prevention and intervention service.

##### **B. Families, Youth, and Children**

Families, youth, and youth/children are eligible for prevention and intervention services if a child/youth is in conflict with his/her family members, in conflict with the community, or at risk of abuse or neglect and do not meet criteria for a child protection or youth in conflict case.

Families, youth, and children are eligible for prevention and intervention services if a human services professional has determined the family has a need for the service.

##### **C. Community Agency or Another Division within the County Department**

A community agency or another division within the county department is eligible to refer a family, youth, or child for prevention or intervention services, or to provide services to a family, youth, or child if so stated in the county's state-approved service delivery plan addendum to the Core Services Plan.

#### **7.200.12 County Responsibilities**

The county department shall be responsible:

- A. To deliver prevention and intervention services according to the state-approved service delivery plan that is an addendum to the Core Services Plan.
- B. To ensure community agencies and/or other divisions within the county provide prevention and intervention services according to the state-approved service delivery plan.
- C. To ensure community agencies and/or other division within the county department refer families, youth, and children to the prevention and intervention service according to the contract with the county Child Welfare Division.
- D. To ensure community agencies and/or other divisions of human services offer prevention or intervention services according to the contract with the county department.
- E. To ensure documentation in the approved state automated case management system of the names, age, ethnicity, gender, service provided, and the reason the service ended for families, youth, and children referred for or provided prevention and intervention services.
- F. To ensure documentation in the approved state automated case management system of all required data elements of each funding source used for prevention and intervention services.
- G. To follow the rules and requirements governing the specific funding stream the county elects to use to provide prevention and intervention services.

#### **7.200.13 Funding Sources**

Counties may use any available funding source to provide services under program area three, in accordance with the rules and requirements governing the specific funding stream utilized.

#### **7.200.14 Referral [Rev. eff. 1/1/14]**

- A. The county department shall provide a referral and intake process wherein all persons have the opportunity to apply for services. In the referral and intake process, the assigned social service staff shall accept applications and screen referrals.
- B. A referral report shall be completed in all appropriate situations, and at a minimum must include:
  - 1. Demographic information.
  - 2. Referring source.
  - 3. Results of initial assessment.
  - 4. Dispositional decision.
- C. The county department, if requested, shall provide the referring source with an explanation of the action taken as a result of the referral.

#### **7.200.15 Initial Functional Assessment**

An initial assessment by the county department of social services staff shall include:

- A. The appropriateness of referral;
- B. Determining if the case is open in the agency;



- C. Awareness of agency and community resources and their current availability;
- D. Initial assessment of problem and service needs;
- E. Determining if another agency can better serve the client;
- F. Information about risk factors that can be used in making decisions about urgency of service delivery; and,
- G. Determining whether an emergency exists that meets the emergency assistance criteria in accordance with Section 7.001.45.

## **7.201 PROGRAM AREA 4 - YOUTH IN CONFLICT**

The Program Area 4 definition and target group information is located at Section 7.000.1, B.

### **7.201.1 INITIAL ASSESSMENT**

- A. The county department shall respond, either with a face-to-face intervention or by telephone, when notified by the court appointed detention screener or a law enforcement officer, of a child or youth in the custody of a law enforcement agency who is inappropriate for secure detention but cannot be returned home.
- B. The county department shall complete a needs assessment for children or youth who do not require physical restriction but for whom immediate removal from the home appears necessary for his/her protection or the protection of others. The county department shall provide needed services, other than secure detention, such as temporary placement, crisis intervention, or in home services.
- C. A child or youth shall not be removed from the home without police protective custody or hold, a court order, or a signed voluntary placement agreement. Before or at the conclusion of the court-ordered placement (72 hours) or police hold (48 hours), the child or youth shall:
  - 1. Be returned home; or,
  - 2. Remain in court-ordered placement; or,
  - 3. Continue in placement by virtue of a voluntary placement agreement signed by the parents/guardians.

## **7.202 PROGRAM AREA 5 - CHILDREN IN NEED OF PROTECTION**

Program Area 5 definition and target group information is located at Section 7.000.1, C. Intake information is located at Section 7.101, et.al.

Referral and assessment activities for Program Area 5 are located in Section 7.101, et al.

### **7.202.1 PROVISION OF ONGOING CHILD PROTECTION SERVICES (CPS)**

- A. If a safety plan exists, the assigned caseworker and supervisor shall review it as the first step in ongoing services planning.
- B. Ongoing child protection services shall be based on the safety and risk issues identified in the safety assessment tool and plan, risk assessment tool, family social history and assessment summary in the Family Services Plan. Services shall be provided to protect the child(ren) or youth from further abuse or neglect through building parental capabilities and increasing parental involvement. This shall be accomplished in a manner that preserves the family when this can safely be done. When the family from whom the child(ren) or youth were removed cannot safely be preserved, services shall be provided that preserve the child(ren)'s or youth's continuity within the extended family and/or home community when feasible. The child(ren) or youth shall be placed in the least restrictive setting, consistent with the child(ren) or youth's and family's assessed needs. When the child(ren) or youth cannot safely return to the family from whom they were removed, services shall be provided to achieve an alternative permanent plan that provides for a child(ren)'s or youth's safety and well-being in a timely manner.

- C. At the point of case transfer, county departments shall assure pertinent information regarding child safety, permanency, and well-being are translated to the new assigned caseworker. This shall be accomplished through the following methods, based on the nature of the case and the workload ability of the county department:
1. Decision-making meeting involving caseworkers and/or supervisors, family and community providers;
  2. Staffing between caseworkers and/or supervisors;
  3. Written transfer summary; and/or,
  4. Documentation in the state automated case management system.
- D. The county department shall complete the safety assessment tool consistent with requirements outlined in Section 7.107.1.
- E. The county department shall complete the risk assessment tool consistent with requirements outline in Section 7.107.2.
- F. Monthly Contact

The primary purpose for case contacts shall be to assure child safety and well-being and move the case toward achieving identified treatment goals. Documentation in the state automated case management system of at least one monthly contact shall summarize progress toward these goals. In child protection cases in which the children or youth remain in the home and in child protection cases in which the children or youth are placed out of the home, the county department shall have face-to-face and telephone contact with the children or youth and parents and relevant collateral contacts as often as needed (while meeting the minimum expectations below) to reasonably attempt to assure the safety, permanency and well-being of the children.

1. A face-to-face contact with a parent, or the guardian to whom the child or youth shall return, or with a child or youth is defined as an in-person contact for the purpose of observation, conversation, intervention or interview about substantive case issues, such as safety, risk and needs assessment, safety and treatment planning that may help to reduce future risk of abuse and neglect, service agreement development and/or progress.
2. The primary purposes for contacts with parents are to assess the parent(s) ability to provide safely for the child or youth and make progress toward treatment plan goals. When a child protection case remains open with the county department, the county department shall maintain sufficient contact with parents or the guardian with whom the child or youth resides, or to whom the child or youth shall return, to lead to timely resolution of child safety issues and to move the case toward timely resolution of treatment plan goals. Such contact shall occur at least monthly and at least every other month there shall be face-to-face contact. Such contacts shall occur with parents at least until a motion for termination of parental rights is filed, in cases in which the child is not living in the home or in which it is no longer planned that the child will return home.
3. The primary purpose for child or youth contacts is to assure the child's safety and well-being regardless of the reason the case is open with the county department. For in-home cases, the county department shall have at least monthly face-to-face contact with children or youth participating as a child in the case.
4. For the frequency of contact of children and youth in out-of-home placement, see Section 7.001.6, B (12 CCR 2509-1).
5. For all other types of contacts, the purpose of the contacts shall be determined by the stage of the case, by the level of safety, risk and needs of the case, and according to whether or not the county department representative is the primary service provider. In cases in which there are individuals and/or someone from another or other agencies who has/have the primary therapeutic relationship with the parent and/or the child or youth, these parties may be designated by the county

department to fulfill additional contacts beyond the minimum contacts described above when additional contacts are needed to reasonably assure the safety, permanency and well-being of the child(ren) or youth in the case.

6. All case contacts with parents and child(ren) or youth by the county department shall be recorded in the state automated case management system, and shall reflect how the purpose of the visit was accomplished.
  7. In exceptional situations, if the minimum case contacts are not able to be provided by the county in any given month, those reasons shall be documented by the county in the case file.
  8. If direct contact is impossible due to the child's location, the following information shall be documented in the state automated case management system indicating:
    - a. The case circumstances, including why the direct contact is not possible;
    - b. How the contact shall occur to possibly include ICPC, and/or courtesy supervision; and,
    - c. How the county department shall monitor progress.
  9. All case contacts by parties designated by the county department, beyond the minimum contacts described above, to provide assessment, treatment and/or monitoring of the parents and children or youth, shall be recorded in the case file. The county department shall have the responsibility to determine that such needed contacts have occurred.
- G. The county department shall provide courtesy supervision services when requested by another county or state when there is court jurisdiction and such services must continue in order to protect the child or youth. In cases where there is no court jurisdiction, the receiving county shall conduct an assessment to determine if services are needed in order to protect the child or youth. Services shall be provided if indicated. Other services include:
1. The requirement to utilize Interstate Compact on the Placement of Children (ICPC) procedures to obtain courtesy supervision shall not be used by a county to deny a request from another state to provide assessment of a child's safety.
  2. When there is court jurisdiction, ICPC procedures shall be followed by the sending state in order to obtain courtesy supervision of a case in Colorado.
  3. The contacts requirements in Section 7.204, shall apply to cases being provided courtesy supervision when there is court jurisdiction and also for voluntary cases for which it is determined that services are indicated.
- H. If a child protection service client for whom services are still needed moves to another county or state, the county or state of current residence should be notified within ten (10) days and provided with written appropriate, relevant information. Change in venue procedures as outlined in Section 7.304.4 (12 CCR 2509-4), shall be followed. If there is no court order for services, the receiving county shall provide outreach and assessment services up to sixty (60) calendar days. If during the sixty (60) calendar days period it is determined that further services are not indicated or the family is unwilling to accept services, the receiving county shall close the case.
- I. All Program Area 5 cases shall remain in that program area as long as the child or youth is at risk for abuse/neglect and the case plan is to reunify the family. Cases on appeal for termination of parent-child legal relationship shall remain in Program Area 5 until the termination is finalized

#### **7.202.2 ONGOING SERVICES FOR CASES OF MEDICAL NEGLECT OF INFANTS WITH DISABILITIES**

The county department shall make available the following services:

- A. Monitoring Court-Ordered Treatment

When either the court has ordered or the parent(s) have agreed upon a course of treatment, the county department shall monitor developments to ensure this treatment is provided. When there is a failure to provide treatment, the county department shall notify the court and immediately petition the court to take appropriate action.

**B. Coordinating With Other Resources**

The county department shall contact agencies that provide services to child(ren) with special needs, and help the parents with referrals to appropriate agencies that provide services for infants with similar disabilities and for their families. Referrals shall be made to agencies with financial resources for costs of medical and rehabilitative services. Information shall be provided regarding parental support groups and community educational resources. This information shall be made available, as is deemed appropriate under the circumstances, whether the county department has taken legal action or not.

**7.203 PROGRAM AREA 6 - CHILDREN IN NEED OF SPECIALIZED SERVICES**

The definition of Program Area 6 is located at Section 7.000.1, D. Specific groups and target groups that are included within Program Area 6 are shown below.

**7.203.1 CHILD WITH ADOPTION ASSISTANCE OR RELATIVE GUARDIANSHIP ASSISTANCE**

Requirements for the Adoption Assistance Program and the Relative Guardianship Assistance Program were consolidated into their respective sections.

A. The Adoption Assistance Program is located in Section 7.306.4 (12 CCR 2509-4).

B. Relative Guardianship Assistance is located in Section 7.311 (12 CCR 2509-4).

**7.203.2 CHILD WITH MEDICAID ONLY SERVICES**

**7.203.21 Target Groups**

- A. Children in foster care who have been determined Title IV-E eligible and have moved into or out of Colorado.
- B. Children for who an adoption assistance agreement is in effect and who have moved into or out of Colorado. See Section 7.306.4 (12 CCR 2509-4) for details regarding children with adoption assistance.
- C. Children with a Title IV-E Relative Guardianship Assistance agreement with a payment in effect and who have moved into or outside of Colorado.
- D. Children eligible for Home and Community Based Services or Home Health Care Services as defined in Section 8.500 of the Department of Health Care Policy and Financing's Medical Assistance rules (10 CCR 2505-10). Children enrolled in the Home and Community Based-Developmentally Disabled Waiver Program administered through Community Centered Boards and the Department of Human Services, Developmental Disabilities.

**7.203.22 Intake/Assessment**

For children and youth moving to Colorado, the county department shall:

- A. Verify from the Interstate Compact on the Placement of Children (ICPC) request from the sending state that the child or youth is eligible for IV-E foster care from the state of origin.
- B. For adopted children and youth, include a copy of the Interstate Compact on Adoption and Medical Assistance (ICAMA) form and the adoption assistance agreement in the child's file or provide a copy of the Guardianship Assistance agreement.

- C. Enter information about the child or youth into the state automated case management system and verify that a Medicaid card has been sent to the foster care provider, the adoptive parent, or the guardian.
- D. Notify the foster care provider, the adoptive parent, or the guardian using the SS-4 Form that the child or youth is eligible for Medicaid only services from Colorado. In addition, advise the provider to notify the county department if foster care is stopped by the originating state or of any change of address. In the case of an adopted child or youth, or those with a guardian, advise the adoptive parent or guardian to notify the county department and the state of origin of any change of address.
- E. Verify annually from the state of origin that the child or youth is eligible for Medicaid.

**7.203.23 Procedures for Children Eligible for Home and Community Based Services or Home Health Care Services**

- A. The county department shall open a case Home and Community Based when an application for Home and Community Based Services (HCBS) or Home Health Care Services is completed. The county department shall provide services as required in Section 8.500 of the Department of Health Care Policy and Financing's Medical Assistance rules (10 CCR 2505-10) for children in Home and Community Based Services or Home Health Care Services Programs.
- B. The county department shall close the case on the state automated case management system no later than the end of the month following the month that the child begins to receive services from the case management agency unless the child remains eligible for services under Program Areas 4 or 5.

**7.203.3 CHILDREN WHOSE DISPOSITION IS NO LONGER REUNIFICATION WITH FAMILY**

The target group includes children for whom all efforts at reunification with the family are exhausted. The parent-child legal relationship may or may not be terminated.

**7.203.31 Eligibility**

- A. A child shall be eligible for services in this target group only if he/she has prior eligibility in another target group and has a permanent plan other than reunification.
- B. Children in this target group shall receive services as addressed in the placement services, relative guardianship, legal guardianship, relinquishment, independent living, and adoption sections of these rules. Contact requirements for these children shall be in accordance with Section 7.001.6. These contacts shall be documented in the state automated case management system.

**7.203.32 County Department Procedures**

- A. The county department shall document in the case file all efforts at reunification for the children in this target group.
- B. The county department shall ensure that the Family Services Plan contains a plan for permanent placement with a relative, adoption, relative guardianship or legal guardianship/permanent custody, or other planned permanent living arrangement, as appropriate (see Section 7.301.24, N).
- C. When the permanent plan is not adoption the county department shall document in the case file why adoption is not appropriate.

**7.203.4 YOUNG ADULTS WHO HAVE EMANCIPATED FROM FOSTER CARE**

Participation in Independent Living programs is voluntary for this population of emancipated young adults, ages 18 to 21, who were in out-of-home care on their 18th birthday and who are in need of continuing support and services toward becoming self-sufficient.

**7.203.41 Eligibility**

Emancipated young adults, ages eighteen (18) to twenty-one (21), who were in out-of-home care on their 18th birthday are eligible to receive independent living services to assist them as they continue the transition to adulthood. Services may include independent living assessment, case planning, transitional services, room and board, and other services as identified in the county Title IV-E Independent Living Plan (see Section 7.305).

#### **7.203.42 County Department Procedures**

- A. The county department of social services shall document in the case file the independent living services provided.
- B. The county department of social services shall complete the Independent Living Plan as a part of the Family Services Plan.
- C. Minimum contact requirements are to be determined by the participant and caseworker, but shall be quarterly, face-to-face, at a minimum to determine appropriateness of services and continued need of the participant.

#### **7.204 CASE CONTACT REQUIREMENTS**

The primary purposes for case contacts shall be to assure child safety and well-being and move the case toward achieving identified treatment goals regardless of the reason the case is open. For Program Areas 4, 5, and 6, and in cases in which children and youth remain in the home or are placed out of the home, the county department shall have face-to-face and telephone contact with the children and youth, parents, and relevant collateral contacts as often as needed to assure the safety, permanency and well-being of the children.

Case contacts shall be documented in the state automated case management system. Minimum contact requirements are as follows:

- A. Program Areas 4, 5, and 6 In-Home Services

The county department shall have at least monthly face-to-face contact with the child or youth. The county department shall have at least monthly face-to-face or telephone contact with the parent, parent surrogate or guardian, with face-to-face contact occurring at least every other month.

- B. Program Areas 4, 5, and 6 Out-of-Home Placement Services Concerning Children and Youth in Colorado

The primary caseworker, that caseworker's supervisor, or the designated visitation caseworker for each child or youth in out-of-home placement for whom the county department has responsibility shall have face-to-face contact with that child or youth at least once every calendar month.

The "designated visitation caseworker" is an individual assigned responsibility for visiting the child or youth. The visitation caseworker may be a caseworker employed by the county department or another county department; a caseworker or contract caseworker in another state; or, a professional within the state who meets the qualifications listed at Section 7.602 and training listed at Section 7.603.

The name and role of the visitation caseworker assigned responsibility for visiting the child or youth shall be recorded in the assigned screen of the state automated case management system and shall be updated if there is a change in the visitation caseworker. There shall be only one designated visitation caseworker for a child or youth at any one time.

Contact shall occur at a minimum of two face-to-face visits with the child or youth during the first thirty (30) days following the out-of-home placement, at least one of which shall be in the out-of-home placement, and a minimum of monthly face-to-face contact with the child or youth after the first month. A portion of every face-to-face contact shall occur out of the presence of the provider for the child or youth. No less than every other month, contact shall occur in the out-of-home placement where the child or youth resides and shall include visual assessment of where the child or youth sleeps.

The majority of monthly face-to-face contacts in a year shall occur in the child or youth's out-of-home placement. For children and youth in out-of-home placement, this is their place of residence. The child or

youth shall be visited in his/her out-of-home placement during the first thirty (30) days of out-of-home placement and at least every other month while in out-of-home placement.

These requirements apply to children and youth for each month in which they spend more than half of the days of the month in out-of-home placement.

Children and youth designated as runaways who are in the county department's custody are included in the population of children and youth for whom the case contact requirements apply.

The caseworker who visits the child or youth shall have working knowledge of the case, including having conducted a recent review of contacts information in the state automated case management system prior to making a visit. The caseworker completing the visit shall record all contacts in the state automated case management system.

The designated visitation caseworker shall not have specific supervision responsibilities for the private placement facility where the child or youth is placed, nor shall the visitation caseworker be an employee of the placement facility where the child or youth is placed.

C. Program Ares 4, 5, and 6 Out-of-Home Placement Services Out of Colorado Concerning Children and Youth

The primary caseworker, that caseworker's supervisor, or the designated visitation caseworker or that caseworker's supervisor, for each child or youth in out-of-home placement out of Colorado shall have face-to-face contact with that child or youth at least once every calendar month.

For cases governed by the Interstate Compact on the Placement of Children (ICPC), the assigned or contracted caseworker in the state where the child or youth is placed may be the designated visitation caseworker. The Colorado caseworker assigned to the case shall document the designated visitation caseworker's visits in the state automated case management system if there is documentation in the case file from the designated visitation caseworker that describes the date, place, and content of the visit with the child or youth for cases governed by ICPC. If there is an out-of-state designated visitation caseworker, that person shall use other means than review of the state automated case management system to assure that he or she has current working knowledge of the case at the time visits are made to the child or youth. A written report on the contact shall be requested by the custodial agency.

D. Program Area 5 Out-of-Home Placement Concerning Parents

While a child or youth remains in out-of-home placement, the county department shall have at least monthly contact with the parent, parent surrogate or guardian, with face-to-face contact occurring at least every other month. Such contacts shall occur until a motion for termination of parental rights is filed, or until "Return Home" is no longer the primary permanency goal.

E. Program Areas 4 and 6 Out-of-Home Services

While a child or youth remains in out-of-home placement, the county department shall have at least monthly face-to-face or telephone contact with the parent, parent surrogate or guardian. Such contacts shall occur until a motion for termination of parental rights is filed, or until "Return Home" is no longer the primary permanency goal.

F. Finalized Subsidized Adoption Services

Contact shall occur every three (3) years through face-to-face, real-time video resources, telephone, electronic mail or mail.

G. Other Groups

For children or youth who are eligible for Home and Community Based Services or Home Health Care services, the contact requirements are a minimum of one face-to-face or telephone contact with the child or youth and family every six (6) months. At least one of the contacts annually must be face-to-face.

H. Contact Exceptions

If direct contact is impossible due to the child's location, the following information shall be documented in the state automated case management system indicating:

1. The case circumstances, including why the direct contact is not possible;
2. How the contact shall occur to possibly include ICPC, and/or courtesy supervision; and
3. How the county department shall monitor progress.

**7.205 CASE CLOSURE**

A. Services shall be terminated and the case shall be closed when one of the following are met:

1. Specific program eligibility criteria are not met.
2. Client withdraws.
3. Client no longer needs the service.
4. Client has moved out of county.
5. Client has died.
6. Services are completed.
7. The child is ready for emancipation or reaches his/her 21st birthday.

B. The worker shall document the following in the case record:

1. Reason(s) for case closure.
2. A summary of services provided, which includes progress made toward stated goals.
3. An assessment of risk of further child abuse or neglect for Program Area 5 cases.

C. The county department shall close a case in the state automated case management system no later than ninety (90) days after the last direct client contact. The county department shall assure the case is closed in the automated system as prescribed by the State.

D. The county department shall close a case in the state automated case management system if there has been no direct client contact with the child and parents for ninety (90) calendar days despite the repeated efforts of the county department to maintain contact.

E. Exceptions to the ninety (90) calendar day limit may be necessary in cases where the county department has custody of the child. In such cases the county department shall document efforts to terminate county custody or document why such efforts are not in the best interest of the child.



(12 CCR 2509-4)

## **7.303 CORE SERVICES PROGRAM**

### **7.303.1 DEFINITIONS**

The Core Services Program consists of the following services:

- A. "Aftercare Services" are any of the Core services provided to prepare a child for reunification with his/her family or other permanent placement and to prevent future out-of-home placement of the child.
- B. "County Designed Services" are innovative and/or otherwise unavailable service proposed by a county that meet the goals of the Core Services Program.
- C. "Day Treatment" are comprehensive, highly structured services that provide education to children and therapy to children and their families.
- D. "Home Based Intervention" services are provided primarily in the home of the client and includes a variety of services which can include therapeutic services, concrete services, collateral services and crisis intervention directed to meet the needs of the child and family. See Section 7.303.14 for service elements of therapeutic, concrete, collateral, and crisis intervention services.
- E. "Intensive Family Therapy" is a therapeutic intervention typically with all family members to improve family communication, functioning, and relationships.
- F. "Life Skills" are services provided primarily in the home that teach household management, effectively accessing community resources, parenting techniques, and family conflict management.
- G. "Mental Health Services" are diagnostic and/or therapeutic services to assist in the development of the family services plan, to assess and/or improve family communication, functioning, and relationships.
- H. "Sexual Abuse Treatment" is therapeutic intervention designed to address issues and behaviors related to sexual abuse victimization, sexual dysfunction, sexual abuse perpetration, and to prevent further sexual abuse and victimization.
- I. "Special Economic Assistance" means emergency financial assistance of not more than ~~\$400~~ **\$800** per family per year in the form of cash and/or vendor payment to purchase hard services. See Section 7.303.14 for service elements of hard services.
- J. "Substance Abuse Treatment Services" are diagnostic and/or therapeutic services to assist in the development of the family service plan, to assess and/or improve family communication, functioning and relationships, and to prevent further abuse of drugs or alcohol.

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(12 CCR 2509-7)

## **7.600 COUNTY RESPONSIBILITIES, STAFF TRAINING AND QUALIFICATIONS, CLIENT RIGHTS, CONFIDENTIALITY**

### **7.601 COUNTY RESPONSIBILITIES**

There are basic information, legal mandates, and policies generic to the administration and/or provision of services that cut across all program and service areas. These include general administrative responsibilities, protection of clients' rights, responsibilities of clients, case processing and documentation, and reporting requirements. The county departments shall provide services to persons who are eligible and belong to the particular Program Area target groups within the following rules of the State Department, subject to available appropriations.

#### **7.601.1 COUNTY RESPONSIBILITIES TO THE STATE DEPARTMENT**

- A. County departments shall administer child welfare services programs in compliance with State Department fiscal and program regulations.
- B. County departments shall report to the State Department at such times and in such manner and form as the State Department requires, including through the state automated case management system.

#### **7.601.2 COUNTY RESPONSIBILITIES FOR COOPERATIVE AGREEMENTS WITH LAW ENFORCEMENT, CHILDREN'S ADVOCACY CENTERS, AND OTHER AGENCIES**

- A. County departments shall develop written cooperative agreements with incorporated and unincorporated municipality, city, county, and state law enforcement agencies that include:
  - 1. Protocols for cooperation and notification between parties on abuse and/or neglect referrals and child deaths resulting from abuse and/or neglect;
  - 2. Protocols for distributing the Notice of Rights and Remedies when required by Section 19-3-212, C.R.S., and Section 7.601.31, of these rules, including, but not limited to assessments of abuse and/or neglect in out-of-home care settings.
  - 3. Joint law enforcement investigation and human or social service assessment procedures;
  - 4. Procedures for independent law enforcement investigation and child welfare service assessment by either party;
  - 5. Procedures for law enforcement investigation of abuse and/or neglect in out-of-home-care settings provided that a law enforcement investigation regarding the criminal aspects of an institutional abuse and/or neglect case shall not relieve the county department of its responsibility to assess the safety of the children in out-of-home care settings; **and,**
  - 6. Procedures limiting the time of the agreement to ensure routine review and updates to the agreement.
- B. The county department may develop a Memorandum of Understanding with Child Advocacy Centers as defined in Section 19-1-103(19.5), C.R.S., that is to include:
  - 1. Protocols with advocacy center authorizing the use of their video tape or audio tape equipment;
  - 2. Interviewers are to be qualified;
  - 3. Interviews should meet the National Children's Alliance performance forensic standards for persons conducting these forensic interviews, as found in the National Children's Alliance Standards for accredited member programs; no later amendments or editions are incorporated. Copies of these

standards are available from the Colorado Department of Human Services, Division of Child Welfare, 1575 Sherman Street, Denver, Colorado 80203, or at any State publications depository library;

4. The county department is not responsible for the training of the forensic interviewer employed by the advocacy center;
  5. Procedures for conducting forensic interviews in a manner that is of a neutral fact-finding nature and coordinated to avoid duplicate interviews; and,
  6. The child advocacy center shall provide technical assistance for forensic interviews, forensic medical examinations, or evidence collection or preservation.
- C. Requests for services, from agencies, including other county departments or states, shall be responded to with the same level of attention and to the same extent as requests received from within the county, and as specified in each of the program areas.

#### **7.601.3 COUNTY RESPONSIBILITIES TO ADVISE CLIENTS – COOPERATION AND RESIDENCE – AVAILABLE SERVICES**

- A. County departments shall ensure that clients are advised of their responsibility to work with the county department throughout service assessment, planning and delivery in court involved and voluntary cases, in order to establish and achieve common goals of safety, well-being and permanency.
- B. County departments shall ensure that clients are advised in writing and orally of the client's responsibility to report within thirty (30) calendar days, changes of circumstances affecting their eligibility. .
- C. When a client leaves the original county of residence that county department shall close its case file with exceptions found in individual Program Areas (e.g., Program Areas 3 and 5). Clients are to be advised of the county department's action on the state prescribed notice of social service action form, if applicable.
- D. County departments shall make reasonable efforts to advise county residents of services available through the state and county department by means of such methods as press releases, presentations, pamphlets, websites, social media and other mass media.

#### **7.601.31 Required Notice of Rights and Remedies**

- A. All county departments shall utilize the state prescribed "Notice of Rights and Remedies for Families" in cases subject to Article 3 of the Colorado Children's Code, "Dependency and Neglect".
- B. County departments shall add county-specific information to the state prescribed form and supply copies of the notice to all law-enforcement agencies within the county or district.
- C. The notice shall be delivered at the time of a child's removal to the parent(s) and family from whom the child is removed by court order or by law enforcement personnel. The notice shall specify the cause of the removal of the child or children.
  1. If the removal is an emergency pursuant to Section 19-3-401, C.R.S., a copy of the court order directing the removal of the child or children from the home shall be delivered to the family promptly upon its availability.
  2. If the removal of the child or children is not an emergency, a copy of the court order directing the removal shall also be provided to the parents and family at the time of removal.

#### **7.601.4 COUNTY RESPONSIBILITIES TO RESPOND TO REFERRALS**

- A. County departments shall have staff continuously available twenty-four (24) hours a day to receive referrals of alleged abuse and/or neglect, conduct initial reviews of such referrals and assess those referrals that are appropriate for child welfare services.
- B. County departments shall establish written response protocols outlining the county plan for weekends, holidays, and after-hour coverage, to include:
  - 1. How the county department will ensure that those individuals reporting abuse and/or neglect after hours are directed to the designated number or agency for response;
  - 2. Requirements for thorough documentation to support the disposition or actions of the county department; and,
  - 3. Requirements that referrals are entered into the state automated case management system as outlined in described in 7.103.9, A.
- C. County departments shall ensure that personal, telephone, or written contact is made within five (5) working days of receiving a request for services that does not involve allegations of abuse and/or neglect or as otherwise specified for target groups within Program Areas.

#### **7.601.5 MANDATORY REPORTING OF CHILD ABUSE AND/OR NEGLECT**

All county department staff who have reasonable cause to know or suspect child abuse or neglect as set forth in Section 19-3-304, C.R.S., are mandated to report such information to the appropriate county department staff or local law enforcement.

#### **7.601.6 CHILD PROTECTION TEAMS**

A county department of social services receiving fifty (50) or more referrals of child abuse and neglect per year shall have a multi-disciplinary child protection team in accordance with Sections 19-1-103(22) and 19-3-308(6), C.R.S.

#### **7.601.7 COUNTY RESPONSIBILITIES FOR CASE DOCUMENTATION**

- A. There shall be case documentation in all active cases as required by the individual Program Area.
  - 1. Frequency of case documentation of case activity will be at a minimum every six (6) months and more often as needed, according to the case plan or Family Service Plan.
  - 2. Summary documentation updating a case record shall be done at least every six (6) months or whenever a case is transferred from county to county, between workers in a county, or when a case is closed.
  - 3. For cases in Program Areas 4, 5, and 6, when there is a change in caseworker or a transfer of a service case to another county, the new caseworker shall have telephone or in-person contact with the child and/or provider within thirty (30) calendar days after the change or transfer.
- B. A written narrative summary of case activity shall include, but is not limited to, the following (a court report containing the same information will suffice):
  - 1. Ongoing assessment of individual and/or family functioning;
  - 2. Assessment of progress toward objectives and goals;
  - 3. Chronology of significant events including dates of occurrence;
  - 4. Method of intervention/treatment and impressions of effectiveness;
  - 5. Changes and/or refinements of case plan;

6. Type and extent of court involvement; and
7. Other significant individuals or agencies involved.

For cases in Program Areas 4, 5, and 6 in which an Administrative Review is substituting for a court review, the county shall assure that a written summary containing the above information is complete and present in the case file. The county shall submit this written summary with the Administrative Review findings to the court.

- C. A case plan/agreement for each service period shall be developed which contains all of the required information.
- D. Documentation of all pertinent contact sheets shall be prepared and prior to the periodic summary of such activities.
- E. Evaluation and reassessments pertaining to each service period shall be conducted which reflect case movement toward the long-term goal.
- F. A written summary shall be completed within thirty (30) calendar days of closure which shall include:
  1. Summary of contacts;
  2. Reason for closure;
  3. Summary of services provided; and
  4. Assessment of effectiveness of services in terms of client's stated goals including, where possible, the client's assessment of the experience.

#### **7.601.8 COUNTY RESPONSIBILITIES TO DETERMINE AND DOCUMENT FUNDING SOURCE FOR THE PURPOSE OF REPORTING SERVICES AND TO GAIN MAXIMUM FEDERAL REIMBURSEMENT**

If a child is determined eligible for services, the county department shall document the child's funding source eligibility on the Department's automated reporting system. This activity shall occur for each child opened on the department's automated reporting system. Eligibility shall be documented for each funding source for which the child is eligible.

Eligibility criteria and required time frames for determination are found in subsections 7.601.81 through 7.601.86.

#### **7.601.81 Title IV-E Foster Care**

Title IV-E of the Social Security Act provides federal matching funds to help pay for the cost of foster care for eligible children. It also pays for training and administrative costs associated with the delivery of services to Title IV-E eligible children.

- A. Eligibility Verification and Documentation
  1. Verification of the child's citizenship or alien status is required. Other information received by the county department to support a Title IV-E eligibility determination does not require verification unless it conflicts with other information in the possession of the department. If such a conflict occurs, the county department shall use verification procedures provided in the rules for the Colorado Works Program to resolve the conflict (9 CCR 2503-1).
  2. The county department shall document each of the eligibility factors on the state prescribed form. The county must ensure that a copy of the signed voluntary placement agreement or court order and any required verification are present in the case file.
  3. The county department shall use the following eligibility effective dates in the state automated case management system:

- a. The eligibility effective date of the child for Title IV-E shall be the first day of the month in which all eligibility criteria for the child are met, but can be no earlier than the first day of placement.
- b. The date of eligibility of the placement for reimbursements through Title IV-E is the first day of the month in which all the Title IV-E provider eligibility criteria are met.
- c. With respect to the court order/petition, the date that is used is the date of the court order or the date a petition is filed for custody of the child which eventually leads to a court ordered removal of the child from the home.

**B. Title IV-E Eligibility Criteria for a Child - Initial Determination**

- 1. The child was removed from his/her parent(s) or other specified relative either by:
  - a. A voluntary placement agreement entered into by the child's parent or legal guardian; or,
  - b. Order of the court.
- 2. The first court ruling sanctioning the removal of the child from the home must contain findings to the effect that:
  - a. Continuation in the home would be contrary to the welfare of the child; or,
  - b. Out-of-home placement is in the best interests of the child.

If this "best interests" determination is not recorded in the first written court order, signed by a judge or magistrate, pertaining to the removal of the child from the home, a transcript of the findings and orders from the court proceeding is the only other documentation that can be accepted to verify that the required judicial determination was made. Neither affidavits nor subsequent "nunc pro tunc" orders are acceptable verification for meeting the "best interests" requirement.
- 3. There must be an order of the court within sixty (60) calendar days after the date the child is placed in out-of-home care with a finding to the effect that:
  - a. Reasonable efforts were made to prevent the removal of the child from the home; or
  - b. An emergency situation exists such that the lack of preventative services was reasonable; or,
  - c. Reasonable efforts to prevent the removal of the child from the home were not required. (See Section 7.304.53, B, 3, for circumstances in which the court may determine, that reasonable efforts to prevent removal are not required).

If a "reasonable efforts to prevent the removal" determination was made by the court as required, but was not recorded in the original written court order signed by the judge or magistrate pertaining to that judicial determination, a transcript of the findings and orders from the court proceeding is the only other documentation that can be accepted to verify that the required determination was made. Neither affidavits nor subsequent "nunc pro tunc" orders are acceptable verification for meeting this "reasonable efforts" requirement.
- 4. The county is granted legal custody of the child or the child is in out-of-home care under a voluntary placement agreement.
- 5. The child must have lived with a parent or other specified relative from whom the child is removed through a voluntary placement agreement or court-ordered custody with the county department in the month, or within the six (6) months preceding the month, in which the voluntary placement agreement was signed or court proceedings were initiated to remove the child.

6. A child removed through a “constructive removal” shall be determined Title IV-E eligible if all other applicable criteria for Title IV-E eligibility are met.

A constructive removal occurs when all of the following apply:

- a. The child resides with a non-parent caretaker who is not the legal custodian or guardian of the child;
  - b. The child is court ordered into the custody of the county department or placed through a voluntary placement agreement; and
  - c. The child remains in the home of the caretaker who serves as the out-of-home care provider to the child after the county is awarded custody or obtains the agreement for voluntary placement.
7. To be eligible for Title IV-E, the child must be determined eligible for Aid to Families with Dependent Children (AFDC) in accordance with the July 16, 1996, regulations (and exceptions as allowed).

C. Title IV-E Eligibility Criteria of a Provider

For the placement costs of a Title IV-E eligible child to be claimable through Title IV-E funding the provider must be a Title IV-E eligible provider. An out-of-home provider must be fully licensed or fully certified to be a Title IV-E eligible provider.

Placement costs of Title IV-E eligible children placed with provisionally licensed or provisionally certified out-of-home care providers will not be claimable through Title IV-E foster care as they are not fully licensed or fully certified providers.

Administrative costs for an otherwise Title IV-E eligible child who is placed in less than fully licensed or fully certified out-of-home care placements are not claimable through Title IV-E funding, except when the child is placed with a relative and the relative is pursuing full foster care certification. Administrative costs can be claimed for up to six months while the child remains in placement with a provisionally certified relative provider.

Administrative costs are not claimable through Title IV-E funding for children who are placed in facilities that are not Title IV-E eligible facilities, such as a detention placement, except for the calendar month in which a child moves from a facility that is not eligible for Title IV-E funding to a Title IV-E claimable out-of-home care facility.

D. AFDC Eligibility Tests

Title IV-E requires that eligibility for Aid to Families with Dependent Children (AFDC) must be determined in accordance with the regulations as in effect on July 16, 1996, and exceptions as allowed. See AFDC rules from July 16, 1996. The AFDC eligibility month is the month court proceedings leading to the removal were initiated or the month in which a voluntary placement agreement was signed.

1. Living with a Relative - The child must have lived with a parent or other specified relative:
  - a. During the month in which court proceedings to remove the child were initiated or a voluntary placement agreement was signed; or,
  - b. Sometime within the six (6) months preceding the month in which court proceedings to remove the child were initiated or a voluntary placement agreement was signed.
2. Deprivation of Parental Support - The child must be deprived of parental support or care of one or both parents by reason of:
  - a. Death;

- b. Incapacity - physical or mental;
- c. Continued absence from the home; or
- d. Unemployment - deprivation due to unemployment exists when:
  - 1) Both of the child's natural or adoptive parents resided in the removal home in the month the voluntary placement agreement was signed or court proceedings were initiated to remove the child from the home; and,
  - 2) The household income, after AFDC income tests are applied, is less than the need standard for the household.

3. Determination of Need

The income and resources of the household members of the removal home must be within the allowable standards for an AFDC assistance unit. Refer to the AFDC rules from July 16, 1996, to determine which members of the household are considered in the determination of income and resources.

- a. Resources - The family must have less than \$10,000 in countable resources.
- b. Income Test - The household income after AFDC income tests are applied must be less than the need standard for the household.

4. Additional AFDC Eligibility Factors

- a. Age - The child must be under eighteen (18) years, or if over eighteen (18) but not yet nineteen (19) years of age, must be a fulltime student in a secondary school or in the equivalent level of vocational or technical training and expected to complete the program before age 19. Such children are eligible for Title IV-E though the month of completion of the educational program.
- b. Citizenship - The child must be a United States citizen, naturalized citizen, or qualified alien to be eligible of Title IV-E. Refer to Section 3.140 of the Income Maintenance rules (9 CCR 2503-1).
- c. Residency - The child must be a resident of Colorado. If the child's residency is from another state, that state is responsible for determining Title IV-E eligibility of the child.

E. Eligibility Factor - Voluntary Placement Agreement

- 1. A voluntary placement agreement must be completed and signed by the parent(s) or legal guardian and the county department.
- 2. Eligibility for Title IV-E foster care can begin no earlier than the signature date of the voluntary placement agreement.
- 3. Voluntary placement agreements are limited to ninety (90) calendar days. If placement of the child is to continue beyond ninety (90) calendar days, the county department must obtain a petition to review the need for placement that leads to a court order granting the county department legal custody.
- 4. There must be an order by the court within one hundred eighty (180) calendar days of the child's placement in foster care that "continued placement is in the best interests of the child", or words to that effect. If such an order is not made by the court within the allowable one hundred eighty (180) calendar days, the child is not eligible for Title IV-E foster care reimbursement for the remainder of the child's placement in out-of-home care.



F. Eligibility Factor - Relinquishment

If a child is relinquished to the county department, the county shall petition the court to judicially remove the child even though the parent relinquished the child to the agency. Children relinquished to the county department can be Title IV-E eligible when:

1. The child had last been living with the parent within six (6) months of the date court proceedings were initiated.
2. The court order contains the findings shown at Section 7.601.81, B, 2.
3. The child meets other eligibility factors.

G. Minor Parent and Child in Mutual Care

A child residing in mutual out-of-home care with his/her adult parent is not considered removed from the parent because the child continues to reside with the parent in the same residence; therefore, the child is not IV-E eligible.

When the parent is a minor and the minor parent has been determined eligible for Title IV-E foster care, the child's placement costs are reimbursable through Title IV-E foster funding as an extension of the minor parent's cost of care.

H. Required Time Frames

1. The county department is responsible for determining the eligibility of every child entering out-of-home foster care within forty-five (45) calendar days of the placement date unless good faith efforts have been made and recorded in the child's record.
2. Counties shall redetermine eligibility using the state prescribed form every twelve (12) months from the date the child enters foster care.

I. Referral to Child Support Enforcement

The county department shall refer every child determined eligible for Title IV-E foster care to the county department's Child Support Enforcement Unit for child support services, except when the:

1. Child is in continuous placement for less than thirty-one (31) days.
2. Child's absent parent is unknown.
3. Best interests of the child would not be served, such as when parental rights have been terminated or the Family Services Plan documents that family contact is inappropriate.
4. Child's deprivation status under Title IV-E eligibility is "Unemployment".

J. Redetermination of Title IV-E Eligibility Requirements

1. A court order must remain in effect which grants legal custody of the child to the county department or a petition to review the need for placement was filed and the court has ordered legal authority for continued placement within one hundred eighty (180) calendar days of the date a child entered out-of-home care by voluntary placement agreement.
2. Effective March 27, 2001, there must be an order of the court finding that the county department has made reasonable efforts to finalize a permanency plan. This finding must be made within twelve (12) months of the date the child enters foster care, and every twelve (12) months thereafter while the child remains in out-of-home care. If twelve (12) months elapse without this judicial determination, eligibility for Title IV-E foster care temporarily ends. Title IV-E eligibility can resume the 1st day of the month in which the finding is made.

K. Redetermination of Provider Eligibility

An out-of-home care provider must be licensed or certified to be a Title IV-E eligible placement. Placement costs for a Title IV-E eligible child are only Title IV-E claimable when a child is placed with a Title IV-E eligible provider.

Effective September 1, 2000, provisionally licensed or provisionally certified out-of-home care providers will not be claimable placements through Title IV-E foster care as they are not fully licensed or fully certified.

L. Reasonable Candidates

Reasonable candidates for foster care, for the purposes of Title IV-E program, are children determined to be at risk of imminent placement out of the home as defined in Section 19-1-103(64), C.R.S. Administrative costs may be claimed for children who are determined to be at imminent risk of removal from the home through a voluntary placement agreement or court-ordered custody with the county department. A determination must be made as to whether the child is at imminent risk of removal from the home no less frequently than every six (6) months. Reasonable efforts shall be made to prevent the removal of the child from the home until such time that pursuing removal of the child from the home becomes necessary.

**7.601.82 Supplemental Security Income (SSI)**

Supplemental Security Income is a federal monthly award granted to a child 0–21 years of age who has a verified disability.

- A. Recipients of Social Security Administration (SSA) death benefits or Supplemental Security Disability Income for Dependents (SSDI) shall not be coded in this fund source.
- B. The county department shall make application to the Social Security Administration for any child who is believed to meet Supplemental Security Income eligibility criteria. Application for Supplemental Security Income is required for all children enrolled in the Children's Habilitation Residential Program (CHRP) waiver.
- C. Concurrent eligibility for Title IV-E foster care and Supplemental Security Income (SSI) is allowed.
- D. Required Time Frames - Application for benefits shall begin within forty-five (45) calendar days of the child's out-of-home placement in appropriate cases.

**7.601.83 Title IV-A Emergency Assistance**

The county department shall determine eligibility for the Title IV-A Emergency Assistance Program anytime services are provided or purchased for families with children at risk of placement or when the worker transfers an intake case for on-going services.

A. Eligibility Factors

The eligibility determination shall be documented on the state prescribed form and shall include:

- 1. Whether an emergency exists, defined as the removal of a child from his or her home into publicly funded care or state or county supervision, or risk of such removal as determined by the responsible state or county agency officials.
- 2. Whether the child has lived with a relative anytime within the six (6) months preceding the Title IV-A Emergency Assistance application. See the Income Maintenance manual for requirements of relative (9 CCR 2503-1).
- 3. Whether the family's total gross annual income is under \$75,000.

B. Maintenance of Effort (MOE)

Expenditures of services to or on behalf of eligible members of an Emergency Assistance eligible family can be attributed to the State's TANF Maintenance of Effort requirement if a child is living in the household with the parent or other adult relative. The Maintenance of Effort entitlement shall be recorded in the state automated case management system if a case is opened for the child.

C. Required Time Frames

The county shall complete the eligibility determination within thirty (30) business days of case opening. The eligibility effective date can be no earlier than the date when the application is initiated.

**7.601.84 Without Regard to Income**

The Without Regard to Income entitlement shall be the default funding stream when a case is opened in the state automated case management system.

**7.601.9 COUNTY RESPONSIBILITIES TO REPORT FRAUD – RECOVER MONIES OWED**

- A. County departments shall refer, within ten (10) working days, to the appropriate investigatory agency and the district attorney any alleged discrepancy which may be a fraudulent act or suspected fraudulent act by a staff member, client, former client, or provider of services.
- B. County departments shall seek recovery for the total amount of services costs if the county department finds that the individual was not eligible for the service or if fraud is established.
- C. County departments shall take whatever action is necessary to recover payments when staff members, current or former clients and/or providers owe money to the state and/or county department because of overpayments, ineligibility and/or failure to comply with applicable state laws, rules or procedures.

**7.602 STAFF AND VOLUNTEER QUALIFICATIONS**

**7.602.1 STAFF QUALIFICATIONS**

- A. The county department shall ensure that all personnel who supervise or provide professional services in child welfare services possess the necessary minimum qualifications:
  - 1. Professional Entry (Training) Level Position

This position must have obtained a Bachelor's degree with a major in a human behavioral sciences field.
  - 2. Professional Journey Level Position

This position must have obtained the skills, knowledge, and abilities to perform duties at the full independent working level through experience and education.

    - a. A Bachelor's degree with a major in a human behavioral science field and one year of professional caseworker experience acquired after the degree in a public or private social services agency; or,
    - b. A Bachelor's of Social Work degree with a major in public child welfare and successful completion of an approved field placement in a county department of social/human services; or,
    - c. A Master's degree in social work or human behavioral sciences field.
  - 3. HOTLINE STAFF (PLACEHOLDER)
  - 4. HOTLINE STAFF SUPERVISOR (PLACEHOLDER)

5. Life Skills Staff Position

This position must have obtained a high school diploma or a General Equivalency Diploma (GED) and six (6) months full time public contact in human services or a related field. Substitution for public contact is successful completion of a certificate program and/or college course equivalent to public contact in human services or a related field.

6. Casework Supervisor Position

- a. This position must have obtained a Bachelor's degree with a major in a human behavioral sciences field (no substitution) and three (3) years professional casework experience at the journey level obtained after the degree; or
- b. A Master's degree or higher in social work or human behavioral sciences field and two (2) years professional casework experience at the journey level obtained before or after the advanced degree.

7. Education Requirements

In order to meet the minimum educational requirements of a human behavioral science degree, the applicant must have a degree with major course work (equivalent to thirty semester hours or forty-five quarter hours) in either development of human behavior, child development, family intervention techniques, diagnostic measures or therapeutic techniques such as social work, psychology, sociology, guidance and counseling, and child development.

8. Waiver Process

If proven recruitment difficulty exists, county departments may request a waiver of these requirements by submitting a request to the State Department of Human Services, Division of Child Welfare Services.

B. The county shall ensure supervision of casework and case management staff through:

1. Review of individual and family assessments;
2. Family Service Plans;
3. Records maintenance and documentation, including updated information in the Department's automated reporting system; and,
4. Plans for termination of services.

These review findings shall be documented in writing by supervisory personnel and provided to the social service staff and state staff upon request.

C. All current and prospective employees of the county department, who in their position have direct contact with any child in the process of being placed or who has been placed in out of home care, shall submit a complete set of fingerprints to the Colorado Bureau of Investigation (CBI) that were taken by a qualified law enforcement agency to obtain any criminal record held by the CBI.

1. The person's employment is conditional upon a satisfactory criminal background check; and subject to the same grounds for denial or dismissal as outlined in Section 26-6-104(7), C.R.S., including:
  - a. Checking records and reports; and,
  - b. Individuals who have not resided in the state for two years shall be required to have a Federal Bureau of Investigation (FBI) fingerprint-based criminal history.

2. Payment of the fee for the criminal record check is the responsibility of the individual being checked.
3. Prospective employees who are transferring from one county department to another are not required to be re-fingerprinted if they complete the following process:
  - a. New employees must obtain their CBI clearance letter or a photocopy of their processed fingerprint card from their former employer. They must attach it to a new fingerprint card, with the top portion completed.
  - b. The new fingerprint card must include the new employer's address. "Transfer-County Department" must be inserted in the "Reason Fingerprinted" block.
  - c. The CBI clearance letter (or photocopy of the old fingerprint card) and the new fingerprint card must be sent with money order payable to the CBI.
  - d. County departments that have accounts with CBI are not required to send the money order, and they shall enter their CBI account number in the OCA block of the new fingerprint card.

#### **7.602.2 VOLUNTEER QUALIFICATIONS**

County departments may use volunteers to the extent feasible and practical in the administration and delivery of services. County Departments shall employ a process to screen volunteers if such persons' responsibilities include direct contact with children.

#### **7.603 CHILD WELFARE TRAINING ACADEMY REQUIREMENTS (Reserved for Future Use)**

#### **7.604 ANTI-DISCRIMINATION**

Child welfare services programs shall be administered in compliance with Title II of the Americans with Disabilities Act of 1990, Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and the requirements of section 504 of the Rehabilitation Act of 1973. No later editions or amendments are included. Copies may be obtained or examined during regular business hours by contacting the Director, Division of Child Welfare Services, at the Colorado Department of Human Services, 1575 Sherman Street, Denver, Colorado 80203; or any state publications depository library.

- A. County department staff shall not deny a person aid, services, or other benefits or opportunity to participate therein, solely because of age, race, color, religion, creed, sex, national origin, political beliefs, method of payment, or disability.
- B. County departments shall make services available to all eligible children and their families, including disabled individuals, through hiring qualified staff or through purchase of necessary services.
- C. County departments must be accessible to all applicants and recipients who wish to receive services, or the services must be made accessible at an alternate location, as set forth in the county written plan.
- D. County departments shall have an affirmative action plan and a disability services plan.
- E. County departments shall take reasonable and prudent steps to ensure that persons with limited English proficiency have meaningful and equal access to programs, services and information free of charge.
- F. County departments shall take extra care to ensure that the choice of interpreter by a person with limited English proficiency is voluntary and made with the knowledge that a competent interpreter could be provided by the county department at no cost to the person with limited English proficiency upon request.
- G. County departments shall post signs in reception areas, intake areas or other entry points in the department notifying persons with a physical or mental disability that auxiliary aids and services, including sign language, are available upon request.

## **7.605 CONFIDENTIALITY**

Unless authorized in these rules the use or disclosure of information by the county department concerning current or former clients is prohibited.

### **7.605.1 CONFIDENTIAL INFORMATION PROTECTED**

- A. County departments shall treat all information as confidential according to applicable statutes, including, but not limited to, the following:
  - 1. Names and addresses of current or former clients and services provided;
  - 2. Information related to the social and economic conditions or circumstances concerning any individual including wage or income information or correspondence obtained from any source including state or federal agencies;
  - 3. Agency evaluation of information about any individual;-
  - 4. Medical, psychological, or social evaluations including diagnosis or past history of disease, or disability of any kind; and,
  - 5. The name, address, and any other identifying information of the reporting party in an abuse and/or neglect referral.
- B. All confidential information shall be sorted and processed so that there are safeguards to ensure no unauthorized personnel can acquire or retrieve the information.

### **7.605.2 PROCEDURES FOR RELEASE OF CONFIDENTIAL INFORMATION**

- A. County departments shall obtain written permission from the individual or family for the release of information, unless such release is otherwise authorized in these rules or by law or unless the referring agency has already secured written permission.
- B. The release or use of information concerning current or former clients shall be restricted to persons or agency representatives who are subject to standards of confidentiality that are comparable to those of the state and county departments.
- C. County departments shall apply these rules to requests for information from such groups or individuals as legislators, governmental authority, the courts, or law enforcement officials, as from any other source. Whenever there is a question about the legality of releasing information to persons seeking information from the county department, the requestor shall be advised to request the court to require the county department to produce the desired records or information within the custody or control of the county department.

#### **7.605.21 County Responsible for Processing Inquiries Concerning Abuse and/or Neglect Referrals**

- A. The county department that entered the founded report of abuse and/or neglect shall process all inquiries submitted by the following types of entities or individuals:
  - A. Departments of human or social services, Court-Appointed Special Advocate Program (CASA), the courts or individuals authorized to review records and reports of abuse and/or neglect;
  - B. Individuals or child placement agencies approved to conduct home studies for out of home placement providers;
  - C. Governing bodies and citizen review panels for the purposes of carrying out their duties; and,
  - D. Inquiries from individuals who have been involved with the county department requesting a copy of the information pertinent to himself or herself or as having the legal responsibility or authorization to care for,

treat, or supervise a child who is the subject of a report or record. The exception to this is employment and volunteer related background check inquiries (see sections 7.605.22, C and 7.701.32).

**7.605.22        Sharing of Confidential Information Between Governmental Agencies – Administrative Reviews**

- A. County departments shall share appropriate information with other human or social services agencies and community professionals who care for, treat, or supervise a child to ensure coordination of services and protection of the child. Agencies or individuals receiving the information must have a need to know the information for the purposes of investigations and case management in the provision of services or the administration of their respective programs. County departments shall require that these agencies and persons have confidentiality standards. Release of information shall be obtained, when required.
- B. Individuals participating in a kinship, foster care, or alternative service review of a child at the invitation of the county department shall be considered as part of the administration of the child welfare services program for purposes of handling confidential information. The role of such persons is to contribute information essential to the delivery of services to the child and the child's family. Information concerning the child and the child's family shall be considered confidential by all parties to the review system. Releases of information shall be obtained, when required.
- C. Provisions for employment and volunteer related background check inquiries will be followed as outlined in section 7.701.32 "Use of Reports and Records of Child Abuse or Neglect for Background and Employment Inquiries".

**7.605.23        Release of Confidential Information in Court Proceedings – Reporting Party**

- A. In a criminal or civil proceeding in which the county case record is subpoenaed or any county representative is ordered to testify concerning a current or former client, the court shall be advised through proper channels of the statutory provisions, policies, or rules and regulations concerning disclosure of information. Confidential information shall not be released in a judicial proceeding unless so ordered by the court.
- B. Confidential information, such as the identity of the reporting party, shall not be released in a judicial proceeding unless so ordered by the court.

**7.605.24        Release of Confidential Information to Clients**

County departments shall define in writing and submit to the State department a process by which clients and former clients may obtain access to their case records. The following elements shall be included in the process:

- A. Designated source (individual and position) within the county department who will handle client requests for records access;
- B. Directions for maintaining a record of the requests;
- C. Time frames for responding to requests;
- D. Directions for individuals requesting access to records;
- E. How editing is to occur and by whom (removal or reporting party information; removal of other confidential information which is protected by law);
- F. Charges involved for the requestor; and,
- G. Warning regarding the sharing of confidential information by the requestor.

**7.605.25        Release of Confidential Information for Conflict Resolution Purposes**

For purposes of carrying out the conflict resolution duties as set forth in section 19-3-211, C.R.S., county governing bodies and citizen review panels shall be given access to child abuse and/or neglect records or reports related to specific grievances under their purview. County departments shall ensure that members understand the confidential nature of such information.

### **7.605.3 USE OF CONFIDENTIAL INFORMATION – RELEASE NOT REQUIRED**

#### **7.605.31 Internal Inquiries**

County departments shall perform inquiries into the state automated case management system for information pertaining to their own internal county department operations, including, but not limited to:

- A. Investigations and assessments of allegation of abuse and/or neglect;
- B. Certifying individuals as county kinship providers, county foster and/or adoptive-homes; and,
- C. Screening of county department employees and volunteers if such persons' responsibilities include direct contact with children.

#### **7.605.32 Assessments of Known or Suspected Incidents of Child Abuse and/or Neglect**

County departments shall provide child abuse and/or neglect records and reports to the law enforcement agency, district attorney, coroner, or county department investigating or assessing a report of a known or suspected incident of child abuse and/or neglect or treating a child or family which is the subject of the report.

### **7.605.4 PERMITTED USES OF CONFIDENTIAL INFORMATION**

To the extent county departments may access and use confidential information as described above, such access and use is permitted only for purposes directly connected with the administration of child welfare programs and related State Department activities which include:

- A. Administration of county child welfare programs:
  - 1. Establishing of eligibility;
  - 2. Determining amount and type of services to be provided; and,
  - 3. Providing services.
- B. Any investigation, prosecution, or criminal or civil proceeding in connection with the administration of the program.

### **7.605.5 PENALTY FOR UNAUTHORIZED RELEASE**

Any person who willfully permits or who encourages the release of data or information related to abuse and/or neglect contained in the state automated case management system to persons not permitted access to such information, commits a Class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

### **7.606 CHILD WELFARE GRIEVANCE RESOLUTION PROCESS**

The governing body of each county, and city and county, shall establish a grievance process, including a citizen review panel, as required by Section 19-3-211, C.R.S. A grievance filed by a complainant concerning the conduct of a county department employee can be submitted to the county department or the Colorado Department of Human Services Client Services unit.

The following requirements apply to the grievance process:

- A. Definitions



"Grievance" means a complaint filed by a complainant regarding the conduct of an employee of a county department of social services in performing his/her duties under Article 3 of the Children's Code. "Grievance" does not include complaints regarding conduct by the courts, attorneys, law enforcement officials, employees of the State, foster parents or other providers of services to children, or other family members.

"Citizen Review Panel" means an advisory body appointed by the governing body of a county or city and county pursuant to Section 19-3-211, C.R.S. The members of such citizen review panel shall be appointed by the governing body without influence from the State Department or the county department, be representative of the community, have demonstrable personal or professional knowledge and experience with children, and not be employees or agents of the State Department or any county department. At least one member of the citizen review panel in each county and city and county shall be the parent of a minor child at the time of his or her appointment to serve on such panel.

"Complainant" means any person who was the subject of an investigation of a report of child abuse or neglect or any parent, guardian, or legal custodian of a child who is the subject of a report of child abuse or neglect and brings a grievance against a county department in accordance with the provisions of Section 19-3-211, C.R.S.

"Conduct" means the manner in which a county department employee behaves when performing his/her duties under Article 3 of the Children's Code. If an employee makes a decision that is appealable under Colorado statutes and the rules governing child welfare services, an individual may pursue those remedies. The grievance resolution process does not modify the time frames for pursuing the other forms of relief available under Colorado statutes and the rules governing child welfare services.

"Governing body" means the board of county commissioners of a county, or a city council of a city and county, in accordance with Section 19-1-103(54), C.R.S.

"Recommendation" means a proposed course of action that may be implemented by a county director to resolve a grievance. These proposed actions may include reassigning a case to a different employee, requiring an employee to receive training, or administering disciplinary action to an employee, subject to applicable safeguards afforded to the employee through the personnel system under which the employee is employed.

#### B. Time Frames for Resolving Grievances

Any grievance shall be forwarded to the county director for internal resolution within ten (10) working days after it has been received by the county department.

The county director shall act on the grievance within twenty (20) calendar days after s/he receives it. If the county director is able to resolve the grievance to the complainant's satisfaction, s/he will issue a written decision setting forth the resolution. If the county director is unable to resolve the grievance to the complainant's satisfaction within twenty (20) calendar days and the complainant has requested the grievance be referred to the Citizen Review Panel, the county director shall immediately refer the grievance to the Citizen Review Panel, together with the county directors proposed resolution of the grievance.

Within thirty (30) calendar days after receipt of the grievance from the county director, the Citizen Review Panel will review or convene a hearing on the grievance and send a written recommendation regarding the grievance, together with the basis for its recommendation, to the county director and the complainant.

If the county director agrees with the Citizen Review Panel's recommendation, s/he will issue a written decision implementing the recommendation. If the county director or the complainant disagrees with the recommendation, the grievance shall be referred to the governing body.

Within thirty calendar days of receiving the grievance, the governing body shall send its written recommendation regarding the grievance, together with the basis for the recommendation, to the complainant, the county director and to any county employee who is the subject of the grievance. The county director shall issue a final decision including his/her plan to implement the governing body's recommendation, and shall send a copy of this report to the complainant and to the county employee who is the subject of the grievance. Within thirty calendar days after issuing this final decision, the county

director shall submit a written report to the Citizen Review Panel including a disposition of the grievance, and shall send copies of the report to the complainant and to the county employee who is the subject of the grievance.

C. Citizen Review Panel

1. Access to Information and Confidentiality

A Citizen Review Panel shall have access to child abuse or neglect reports and any information from the complete case file that the governing body believes is pertinent to the grievance, which shall be reviewed solely for the purpose of resolving grievances pursuant to the provisions of this section, except that access to identifying information concerning any person who reported child abuse or neglect shall not be provided and no participant in the conflict resolution process shall divulge or make public any confidential information contained in a report of child abuse or neglect or in other case file records to which he or she has been provided access.

2. Informal Testimony

Upon the request of the complainant, the county department, or the subject of a grievance, a citizen review panel may receive testimony from experts or other witnesses. Such testimony must be provided voluntarily and without a fee. Further, such testimony will be provided without an oath, will not be subject to objections from parties to the grievance process, and the witness will not be subject to cross examination. Members of the Citizen Review Panel, however, may ask questions of the witness as the panel's procedures permit.

3. Scope of Inquiry and Recommendations

The Citizen Review Panel shall only inquire into and make recommendations concerning grievances as presented by a complainant and as defined above. The Citizen Review Panel may not access records or receive testimony unless the record or testimony is directly related to a grievance properly referred to the panel. Once the panel has made a recommendation concerning a grievance, or the time for making such a recommendation has expired, the panel may not inquire further into the grievance. The panel may not inquire into the conduct of courts, attorneys, law enforcement officials, employees of the State, foster parents or other providers of services to children, or other family members, nor may the panel inquire into the conduct of a county department employee if no grievance concerning that employee or that conduct has been properly referred to the panel.

The authority of the Citizen Review Panel is limited to making recommendations as defined above. Specifically, the panel may only recommend actions that:

- a. Will resolve a particular grievance concerning the conduct of a county department employee performing his/her duties under Article 3 of the Children's Code; and,
- b. Can be implemented by the County Director.

D. Annual Reports

On or before July 31 of each year, every county or city and county shall submit to the State Department an annual report regarding the resolution of grievances pursuant to this section. At a minimum, this report shall include:

1. The number of grievances received by the County Director, the number of grievances referred to the Citizen Review Panel, the number of grievances referred to the governing board, and the actual time frames for resolving grievances at each level.
2. A brief description of the disposition of the grievances, including the number that were concluded without any action taken, the number which were substantiated, the number resolved by case reassignment, the number resolved by requiring additional training, the number resolved by imposing disciplinary action against a county employee, and the number resolved in other ways.

3. A copy of its county grievance policy; and,
4. A list identifying the Citizen Review Panel members.

E. Counties shall publicize:

1. The availability of the process for all dependency and neglect cases through the "Notice of Rights and Remedies" and by informing child welfare clients, guardians, and legal custodians of the process during the initial contacts with parties and periodically throughout the provision of services related to dependency and neglect cases.
2. The rights and remedies for families as specified in Section 7.601.31.
3. Any other information about the process as deemed relevant by the governing body.

**7.607 COUNTY RESPONSIBILITIES FOR PURCHASE OF SERVICE, CONTRACTING AND ADMINISTRATIVE SERVICE**

**7.607.1 DEFINITIONS**

- A. "Administrative services" are personal services delivered by an individual or organization in lieu of the services being delivered directly by county department employees within the Merit System or county personnel system.
- B. "Program services" are direct program costs.
1. Non-contractual program case services are a type of program service obtained by purchase for a specific client or client groups without the use of a contract. These involve a direct payment to a client or one-time or irregular vendor payment for services provided to a specific client where a contract would be difficult or impossible to obtain.
  2. Contractual program services are obtained by purchase for a specific client or client groups and a contract is required.

**7.607.2 CONTRACTING REQUIREMENTS**

- A. The county department shall enter into a contract before the initiation of administrative or program services, except for non-contractual program case services identified in this section.
- B. The county department shall initiate a written corrective action plan or terminate the contract when it determines that services do not comply with the terms of the contract.
- C. The county department has direct responsibility for, and shall not purchase activities of:
1. Service eligibility determination or redetermination;
  2. Development of the Services Agreement or Family Services Plan;
  3. Authorization of purchased services;
  4. Service fee determination; and,
  5. Monitoring of purchased services.
- D. County department employees shall not act as a provider of purchased program services.
- E. The county shall purchase services only when the rates of payment for services do not exceed the amounts reasonable and necessary to assure the quality of service. Reasonable means the cost does not exceed the community prevailing rate. Necessary means the service is directly related to the client's need.

- F. When contractors are required by statute to be licensed, registered, or certified in order to perform the purchased service, county departments of social services shall assure that such requirements are met, before the execution of the contract. In addition to or in the absence of such statutory requirements, the contractor shall meet standards or criteria as established by the State Department. All personnel engaged in the administration or direct delivery of services purchased by the county department shall meet qualifications as provided under Merit System rules and regulations or an approved county personnel system.
- G. The county department shall purchase services only from contractors independent of the county. State reimbursement shall be available only for purchase of service contracts where the relationship between the county department of social services and the contractor is a relationship of employer-independent contractor, not that of employer-employee.
- H. In cases where the contractor status is not clear, status resolution shall be in favor of the employee status classification.
- I. For program or administrative contracts in the amount \$10,000 or less, the county department may use its own selection criteria for awarding purchase of service contracts.
- J. The county department shall establish a separate file for each contract in excess of \$10,000 and include the following documentation:
  - 1. Supporting the basis for award cost or price; and
  - 2. Identifying the procurement method used (formal advertising or negotiation).
    - a. If formal advertising was used, the county shall include descriptive material used to solicit bids and copies of published bid solicitation notices.
    - b. If negotiation was used, include justification for using this procurement method. Justification shall include one or more of the five acceptable reasons for negotiation listed below.
- K. The county department shall use the most formal procurement method that is possible and practical.
  - 1. Formal advertising is the procurement method that involves open and free competition (i.e., public notice of bid solicitations, a clear and adequate description of the technical requirements for the service to be procured, sealed bids, and the public opening of bids).
  - 2. Procurements may be negotiated if it is not practicable or feasible to use formal advertising. Generally, such procurements may be negotiated if one or more of the following conditions prevail:
    - a. The public exigency will not permit the delay incident to advertising.
    - b. The material or service to be procured is available from only one person or firm.
    - c. The contract is for personal or professional services, or for any service to be rendered by a university, college, or other educational institution. (Personal services here refer to a contract with an individual for the services of that individual. Professional services refer to services rendered by a person or organization licensed or certified by the state.)
    - d. No acceptable bids have been received after formal advertising.
    - e. Formal advertising is otherwise not practicable or feasible, and negotiation is authorized by applicable law, rules, or regulations.
- L. Excluded from requirements of this section "Purchase of Services," are services purchased under the Employment First Program.

- M. Any county department and child placement agency entering into a contract for the provision of foster care services shall include a provision in the contract that recognizes a right of the State Department or county department to recover any funds misused by the Child Placement Agency and to withhold subsequent payments. The provision in the contract shall provide for an appeal of the decision to recover or withhold the funds.

### **7.607.3 PURCHASE OF PROGRAM SERVICES**

A. The purchase of program services:

1. May or may not require a contract depending upon the specific service purchased.
2. Does not require state department prior approval as long as the service is authorized by state rule.

B. Authorized Non-Contractual Program Case Services

1. Transportation for children in out-of-home care, limited to the following purposes:
  - a. For return of runaways, who are in county department custody, to their Colorado home county.
  - b. For a child in out-of-home care to receive services specified in the Family Services Plan that are directly related to visitation and reunification.
  - c. To facilitate a permanent plan through the Interstate Compact.
  - d. To access one-time physical, dental, and psychological examinations for children in out-of-home care who are not Medicaid eligible and have no other insurance.
2. A one-time physical, dental, and psychological examination for children in out-of-home care who are not Medicaid eligible and have no other insurance.
3. Case services authorized in the Adoption Services and Relative Guardianship Assistance Program sections that are specified in a current signed Adoption or Relative Guardianship Assistance Agreement.
4. Other case services provided to children in out-of-home placement when such services are not a part of either room and board or Medicaid treatment or case management services.

C. Contractual Program Services

1. Services may be obtained by purchase for specific clients using the standardized form contracts, identified by number in the paragraph below. Standardized form contracts comply with federal and state statutes and/or regulations for the purchase of service.
  - a. Child Welfare Child Care: Use contract form SS-19 as appropriate.
  - b. Child Foster Care Service: Use state authorized contract forms as appropriate.
  - c. Psychological Evaluations, when purchased once and not through an agency contract: Use contract form SS-21B. Psychological evaluations shall not be purchased for children or adults who are eligible for Title XIX (Medicaid). Third party payment for psychological evaluations shall be used as first payer where possible.
    - 1) Limited purposes for children:
      - a) For assessment of the need for protection - includes psychological evaluations for parents or substitute caretakers. Substitute caretakers are

persons providing care as an alternative to the parent, i.e., includes guardians or legal custodians and excludes foster parents.

- b) For foster care placement.
  - c) For adoptive home placement.
- 2) Limited purposes for adults:  
  
For biological parents, on behalf of children in foster care.
- d. Physical evaluations, when purchased once and not through an agency contract shall use the state authorized contract form. Physical evaluations shall not be purchased with program service funds for children or adults who are eligible for Title XIX (Medicaid). Third party payment for physical evaluations shall be used as first payer where possible.
  - 1) Limited purposes for children:
    - a) Needing assessment of need for protection.
    - b) In Child Welfare Child Care.
    - c) In out-of-home care.
  - e. Evaluation shall include the cost of the examination as well as any written and/or verbal interpretation of the results of the psychological or physical evaluation.

Core Services Program Services: County departments with state approved Core Services plans may use Form FPP-1 or develop and use their own contract for the purchase of Core Services. County developed contracts shall meet the contract content requirements provided in Section 7.607.4, D.

D. Billing and Payment

County department billings for the purchase of program service shall follow state procedures.

**7.607.4 ADMINISTRATIVE SERVICES**

- A. The purchase of administrative services requires:
  - 1. A contract; and,
  - 2. State Department approval.
- B. The content of all administrative contracts shall comply with the requirements as established by the State Department.
- C. The county department shall monitor the provision of services at least every six (6) months under an administrative service contract for compliance with the contract and maintain written documentation of such monitoring including dates of monitoring and results/conclusions.
- D. Contract Content
  - 1. If a county department determines that certain administrative services are to be purchased, the county department shall negotiate terms and write a contract for the purchase.
  - 2. When the county department writes an administrative service contract, the contract shall contain:

- a. All terms of the contract in one instrument, be dated, and be executed by authorized representatives of all parties to the contract prior to the date of the implementation;
- b. A definite beginning and ending date for provision of services up to a maximum of one (1) year duration;
- c. A detailed description of the services to be provided and of the methods, including subcontracting, to be used by the contractor in carrying out its obligations under the contract;
- d. A stated number of units of service at a specific dollar rate, and/or for a specific dollar amount;
- e. The method and source of payment to the contractor;
- f. The source of funds and provision that "Payment pursuant to this contract, if in federal and/or state funds, whether in whole or in part, is subject to and contingent upon the continuing availability of federal and/or state funds for the purposes hereof";
- g. Provision that no fees shall be imposed by the contractor related to services provided under this contract;
- h. Provision that the contractor meets applicable state licensing requirements, and/or federal standards and/or qualifications as provided under Merit System rules and regulations or county personnel system;
- i. Provision that contractor strictly adheres to all applicable federal, state, and local laws that have been or may hereafter be established;
- j. The address(es) of facilities to be used in providing services;
- k. Provision that the contractor shall comply with the requirements of the Civil Rights Act of 1964, the requirements of Section 504 of the Rehabilitation Act of 1973, Americans with Disabilities Act, and for safeguarding information according to rules of the State Department;
- l. Provision that any subcontracts permitted by the contract shall be subject to the requirements of the contract as listed here, and that the contractor is responsible for the performance of any subcontractor;
- m. A statement specifying requirements for fiscal and program responsibility, billing, records, controls, reports, and monitoring procedures;
- n. Provision for access to financial, program, and other records pertaining to services provided under this contract by county, state, and federal officials, and others as authorized in writing by the county;
- o. Provisions for contractor to keep financial, program, or other records pertinent to this contract for a period of 5 years from the contract termination date;
- p. Provision that the parties of the contract intend that the relationship between them contemplated by the contract is that of employer-independent contractor;
- q. Provisions for termination by either party including the manner by which termination will be effected and the basis for settlement. In addition, such contracts shall set forth the conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor; and,

- r. For contracts over \$10,000 certain provisions that will allow for administrative, contractual, or legal remedies in instances in which contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate; and for contracts in excess of \$100,000, the contract must contain provisions for compliance with the Clean Air Act and the federal Water Pollution Control Act.

E. Additional County Option Contract Components

The county department may add optional provisions to the above required standard contract items.

F. Billings and Payment

1. County department billings for administrative service contractual purchase of services shall follow state procedures.
2. State Department reimbursement for a properly approved county administrative service contract is subject to the availability of funds within the county's allocation.

**7.608 HUMAN IMMUNODEFICIENCY VIRUS (HIV) POLICY**

**7.608.1 DEFINITIONS**

- A. Acquired Immunodeficiency Syndrome (AIDS): The late stage of the illness triggered by infection with Human Immunodeficiency Virus (HIV). A person receives an AIDS diagnosis when he or she has a CD4 (helper 1-cell) count of less than 200 and/or certain opportunistic infections common with advanced immune deficiency.
- B. HIV: The detection by laboratory antibody tests of the presence of the Human Immunodeficiency Virus (HIV) in an individual.
- C. Universal Precautions: Measures used to keep a barrier between a person and blood and/or other infectious bodily fluids. The precautions are published by the Centers for Disease Control as accepted methods of preventing the spread of infectious disease and, when used routinely and properly, are sufficient to control the spread of infectious blood borne diseases, including HIV. Following are the universal precautions:
  1. Universal precautions apply to blood and to other body fluids containing visible blood. Blood is the single most important source of HIV in a care giving setting.
  2. Universal precautions also apply to semen and vaginal secretions. Although both of these fluids have been implicated in the sexual transmission of HIV, they have not been implicated in transmission from client to care providers.
  3. Universal precautions do not apply to feces, nasal secretions, sputum, sweat, tears, urine, saliva and vomitus unless they contain visible blood. The risk of transmission of HIV from these fluids, while theoretically possible, is extremely low or nonexistent.
  4. In any contact with visible blood, use a barrier such as latex gloves. When these are not immediately available, such as immediate response to a nosebleed or wound, use a barrier such as a towel. If hands are exposed to blood, they must be washed with soap and water immediately after contact.

**7.608.2 Testing and Confidentiality**

- A. For children and youth in the legal custody of the county department of human or social services, the county department shall recommend to the medical care provider that the child or youth be tested for HIV based on determination of risk including the following considerations:
  1. Specific medical reasons for testing related to the well-being of the child or youth.



2. Authority to test based on legal mandates or the informed consent of the client or those authorized to make medical decisions for the client.
3. Mandatory pre and post test counseling shall include age appropriate information regarding the illness, assistance in dealing with psycho social issues, information about safer sex and a risk reduction plan.
4. A plan shall be developed for re-testing based upon risk behaviors.
5. In the event a child or youth refuses to consent to testing for HIV, the medical care provider shall be requested to provide counseling to the child.

**B. Confidentiality**

Section 25-4-1405(6), C.R.S., allows for minors to be examined and treated for HIV infection without the consent of the parent or guardian. Further, if the minor is age sixteen (16) or older, the results of the examination or treatment need not be divulged to the minor's parent or guardian, or to any person, unless necessary under reporting requirements of Title 25 or Title 19, C.R.S.

In the event that the county becomes aware of positive HIV test results, the county shall develop a plan for confidential management of test results and HIV status. The county's policy may limit access to the test results based on the need to know and must comply with provisions of Title 25, Article 4, Part 14, C.R.S. The need to know shall include, but not be limited to:

1. The care provider, with consideration of his or her capacity to provide appropriate physical and emotional care to a child or youth who is HIV-infected and his or her capacity to appropriately manage confidentiality issues. In the case of residential child care facility, residential treatment center, or child placement agency placement, HIV information shall be provided to the person designated by the facility to coordinate medical care.
2. The caseworker and supervisor for the child or youth, who must manage the case including medical care.
3. Child's biological parents based on the determination of risk to the child. The county department shall include the child's parents in decisions for medical procedures and treatment based on risk to the child, except where parental rights have been terminated.

**7.608.3 SERVICE PROVISIONS**

**7.608.31 Non-Discrimination**

The status of being at risk for HIV exposure or being diagnosed with HIV/AIDS shall not be a cause for denial of services.

**7.608.32 General Services**

The county department shall identify and may refer for medical evaluation children or youth in county custody who are at risk of HIV infection, considering the following factors:

- A. Infants born to known HIV infected mothers or mothers with high risk behavior.
- B. Children who have been involuntary sexual partners because of sexual assault, rape, incest and/or sexual abuse.
- C. Children with hemophilia who were exposed to blood or blood products before 1985 or children or youth who have received blood transfusions before March 1985.
- D. Children engaged in injection drug use past or present, including other injection behaviors such as needle sharing.

- E. Children engaged in unprotected, oral, vaginal, or anal intercourse.

#### **7.609 FEES – RECORDS AND REPORTS**

- A. The county department may assess a fee for the reproduction of county documents. Such fees may be waived in accordance with county policy.
- B. The State Department shall assess a uniform fee for the purpose of conducting employment, volunteer, placement and adoption background screening to determine if the individual has been confirmed in the state automated case management system as a person responsible in a child abuse and/or neglect incident. The fee shall be established by the State Department not to exceed the direct and indirect costs of administering Section 19-1-307(2)(i), (k) to (o), and (t), C.R.S., and Section 19-3-313.5(3) and (4), C.R.S.
- C. The State Department shall review the fee at least annually to determine whether the fee is consistent with funding the direct and indirect costs indicated above.
- D. The State Department is authorized to set the fee not to exceed \$35, taking into consideration the appropriation level set by the General Assembly and the fund balance of, and the funds collected and paid into, the Records and Reports Cash Fund.
- E. The State Department shall not set the fee above \$35, unless specifically approved by the State Board of Human Services. The State Department shall notify the State Board of Human Services of changes to the fee at least annually upon the assessment of the fee.
- F. When the State Department anticipates changing the fee under the parameters set forth above, the State Department shall notify interested persons, at least thirty (30) calendar days in advance, if practicable, to obtain public comment to consider prior to the change.
- G. The State Department shall notify interested persons by way of the Department's Background Investigations Unit website and through information provided by the Background Investigations Unit when responding to background screen requests.

#### **7.610 LOCAL DISPUTE RESOLUTION PROCESS**

- A. County department staff shall advise clients orally and in writing at the time of application of their right to appeal a county department decision either to the State department for a fair hearing and/or to the county department for a local level dispute resolution conference.
- B. Applicants or recipients shall be advised in writing and provided an opportunity for a county level dispute resolution conference within ten (10) calendar days of the mailing date of notice of a decision by the county department of the denial, decrease, discontinuation, or modification of human or social services, and/or Medicaid for children in foster care. Refer to the Income Maintenance rules, Section 3.840 (9 CCR 2503-8), for the proper policy and procedures for noticing and conduct of the local conference.

#### **7.611 STATE APPEAL**

County departments shall advise clients in writing of their right to appeal from adverse decisions of county departments. When issuing a written adverse decision, county departments shall include complete information on appeal rights, including any right to a local conference with the county department.

The rules governing the appeals process, including timeframes and notice, are set forth in rule section 3.850 (9 CCR 2503-8). Appeals of confirmed abuse and/or neglect shall proceed in accordance with Sections 7.202.604 through 7.202.609 (12 CCR 2509-3).

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# Notice of Rulemaking Hearing

**Tracking number**

2014-00898

**Department**

500,1008,2500 - Department of Human Services

**Agency**

2511 - State and Veterans Nursing Homes (Volume 11)

**CCR number**

12 CCR 2511-1

**Rule title**

RULE MANUAL VOLUME 11, STATE AND VETERANS NURSING HOMES

## Rulemaking Hearing

**Date**

10/03/2014

**Time**

10:00 AM

**Location**

Colorado Department of Human Services, Conference Room 4A/B, 1575 Sherman Street, Denver, CO 80203

**Subjects and issues involved**

#14-7-21-1: Name Change from State Veterans Nursing Homes to Veterans Community Living Centers Per SB14-096

**Statutory authority**

24-1-120(5); 26-1-107; 26-1-109; 26-1-111; 26-12-101; 26-12-103, 26-12-201 through 26-12-203, C.R.S. (2013)

## Contact information

**Name**

Shannon Onken

**Title**

Division of Veterans Community Living Centers

**Telephone**

303-866-5966

**Email**

shannon.onken@state.co.us

Title of Proposed Rule: Name Change for the State Veterans Nursing Homes to the Veterans Community Living Centers Pursuant to Senate Bill 14-096

Rule-making#: 14-7-21-1

Office/Division or Program:  
Office of Community Access  
and Independence/Division of  
Veterans Community Living  
Centers

Rule Author: Shannon Onken

Phone: 303-866-5966

E-Mail:  
shannon.onken@state.co.us

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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.)*

Pursuant to Senate Bill 14-096, the State Veterans Nursing Homes are being renamed to the Veterans Community Living Centers. This legislation was effective August 6, 2014. All references to the State and Veterans Nursing Homes will be changed to Veterans Community Living Centers. All references to "Home" will be changed to "Center". This name change will reflect that the wide array of services provided to state veterans.

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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:

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Authority for Rule:

State Board Authority: 26-1-107, C.R.S. (2013) - State Board to promulgate rules; 26-1-109, C.R.S. (2013) - state department rules to coordinate with federal programs; 26-1-111, C.R.S. (2013) - state department to promulgate rules for public assistance and welfare activities; 26-12-103, C.R.S., as amended by S.B. 14-096 – program authority for rules; state board required to adopt rules for management, control, and supervision of the veterans centers

Program Authority: *(give federal and/or state citations and a summary of the language authorizing the rule-making)* 24-1-120(5), C.R.S., as amended by S.B. 14-096 - veterans community living centers included in the department of human services; 26-12-101, C.R.S., et seq., as amended by S.B.14-096 - Veterans Community Living Centers Act; 26-12-201 through 26-12-203, C.R.S., as amended by S.B. 14-096 - establishment of the veterans community living centers

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Initial Review 09/05/2014

Proposed Effective Date 12/01/2014

Final Adoption 10/03/2014

EMERGENCY Adoption N/A

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# **DOCUMENT 1**

*[Note: "Strikethrough" indicates deletion from existing rules and "all caps" indicates addition of new rules.]*

Title of Proposed Rule: Name Change for the State Veterans Nursing Homes to the Veterans Community Living Centers Pursuant to Senate Bill 14-096

Rule-making#: 14-7-21-1

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**STATEMENT OF BASIS AND PURPOSE** (continued)

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Does the rule incorporate material by reference?

☐

Yes

☒

No

Does this rule repeat language found in statute?

☐

Yes

☒

No

If yes, please explain.

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*The program has sent this proposed rule-making package to which stakeholders?*

The Commission on State Veterans Nursing Homes voted unanimously on June 13, 2014, to revise the above mentioned rules.

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Attachments:

Regulatory Analysis

Overview of Proposed Rule

Stakeholder Comment Summary

Title of Proposed Rule: Name Change for the State Veterans Nursing Homes to the Veterans Community Living Centers Pursuant to Senate Bill 14-096

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## **REGULATORY ANALYSIS**

*(complete each question; answers may take more than the space provided)*

### **1. List of groups impacted by this rule:**

*Which groups of persons will benefit, bear the burdens or be adversely impacted by this rule?*

Current residents and future residents of the Veterans Community Living Centers (formerly known as the State Veterans Nursing Homes), the Commission on State Veterans Nursing Homes, and staff of the Colorado Department of Human Services will benefit from the name change.

### **2. Describe the qualitative and quantitative impact:**

*How will this rule-making impact those groups listed above? How many people will be impacted? What are the short-term and long-term consequences of this rule?*

The name change will more accurately reflect our presence in the community and the array of services we are able to provide to the community.

### **3. Fiscal Impact:**

*For each of the categories listed below explain the distribution of dollars; please identify the costs, revenues, matches or any changes in the distribution of funds even if such change has a total zero effect for any entity that falls within the category. If this rule-making requires one of the categories listed below to devote resources without receiving additional funding, please explain why the rule-making is required and what consultation has occurred with those who will need to devote resources.*

State Fiscal Impact *(Identify all state agencies with a fiscal impact, including any Colorado Benefits Management System (CBMS) change request costs required to implement this rule change)*

None

County Fiscal Impact

None

Federal Fiscal Impact

None

Other Fiscal Impact *(such as providers, local governments, etc.)*

None

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**REGULATORY ANALYSIS** (continued)

**4. Data Description:**

*List and explain any data, such as studies, federal announcements, or questionnaires, which were relied upon when developing this rule?*

Not applicable.

**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 alternatives due to the statutory responsibilities of the program.

Title of Proposed Rule: Name Change for the State Veterans Nursing Homes to the Veterans Community Living Centers Pursuant to Senate Bill 14-096

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## **OVERVIEW OF PROPOSED RULE**

Compare and/or contrast the content of the current regulation and the proposed change.

<u>Section Numbers</u>	<u>Current Regulation</u>	<u>Proposed Change</u>	<u>Stakeholder Comment</u>			
11.000	Title	Change "State and Veterans Nursing Homes" to "Veterans Community Living Centers".	<u>  X  </u>	Yes	<u>  </u>	No
11.100	Definitions	Change all references from "State and Veterans Nursing Homes" to "Veterans Community Living Centers". Change "Home" to "Center".	<u>  X  </u>	Yes	<u>  </u>	No
11.110	Describes resident eligibility criteria for admittance into the State Veterans Nursing Home	Change all references from "State Veterans Nursing Homes" to "Veterans Community Living Centers". Change "Home" to "Center".	<u>  X  </u>	Yes	<u>  </u>	No
11.120	Describes the admission process, wait list, and priority for admissions to the State Nursing Homes	Change all references from "State or Veterans Nursing Homes" to "Veterans Community Living Centers". Change "Home" to "Center".	<u>  X  </u>	Yes	<u>  </u>	No
11.130	Describes the responsibility of the State Veterans Nursing Homes	Change all references from "State or Veterans Nursing Homes" to "Veterans Community Living Centers". Change "Home" to "Center".	<u>  X  </u>	Yes	<u>  </u>	No



Title of Proposed Rule: Name Change for the State Veterans Nursing Homes to the Veterans Community Living Centers Pursuant to Senate Bill 14-096

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**OVERVIEW OF PROPOSED RULE** (continued)

<u>Section Numbers</u>	<u>Current Regulation</u>	<u>Proposed Change</u>	<u>Stakeholder Comment</u>			
11.140	Describes room reservation charges of the State Veterans Nursing Homes	Change "Home" to "Center".	<u>X</u>	Yes	<u>  </u>	No
11.150	Describes financial information required for admittance into the State Veterans Nursing Homes	Change "Home" to "Center".	<u>X</u>	Yes	<u>  </u>	No
11.160	Describes rates for care for the State Veterans Nursing Homes	Change "Home" to "Center".	<u>X</u>	Yes	<u>  </u>	No
11.170	Describes how past due accounts are managed for the State Veterans Nursing Homes	Change "Home" to "Center".	<u>X</u>	Yes	<u>  </u>	No
11.200	Describes burial at the Colorado Veterans Center at Homelake	Change all references from "State and Veterans Nursing Homes" to "Veterans Community Living Centers".	<u>X</u>	Yes	<u>  </u>	No

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**OVERVIEW OF PROPOSED RULE** (continued)

<u>Section Numbers</u>	<u>Current Regulation</u>	<u>Proposed Change</u>	<u>Stakeholder Comment</u>			
11.300	Describes the responsibilities of the Local Advisory Boards at the State Nursing Homes	Change all references from "State and Veterans Nursing Homes" to "Veterans Community Living Centers". Change "Home" to "Center".	<u>X</u>	Yes	<u>  </u>	No

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## **STAKEHOLDER COMMENT SUMMARY**

### **DEVELOPMENT**

The following individuals and/or entities were included in the development of these proposed rules (such as other Program Areas, Legislative Liaison, and Sub-PAC):

The Commission on State and Veterans Nursing Homes

### **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:

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 ☐ No

The Colorado Department of Health Care Policy and Financing and the Colorado Department of Public Health and Environment have been contacted regarding the rules. Both agree there is no impact.

Have these rules been reviewed by the appropriate Sub-PAC Committee?

☐ Yes ☒ No

Date presented \_\_\_\_\_. Were there any issues raised? \_\_\_\_ Yes \_\_\_\_ No

If not, why. The rules are being changed pursuant to S.B. 14-096 and have no county impact.

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**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 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.*

The Commission on State and Veterans Nursing Homes supports the name change as outlined above, in the attached letter dated July 21, 2014, addressed to Ms. Viki Manley. The Division of State Veterans Nursing Homes concurs with the decision of the Commission on State and Veterans Nursing Homes.

James C. Bobick  
15755 East Chanango Ave.  
Aurora, CO 80205

July 21, 2014

Viki Manley  
Director, Office of Community Access and Independence  
Colorado Department of Human Services  
1575 Sherman Street  
Denver, CO 80203

Dear Ms. Manley:

As Chair of the Commission on State Veterans Nursing Homes, this letter is to inform you that the Commission supports and agrees with the name change of the Commission to the Commission on Veterans Community Living Centers which we understand will become effective August 1, 2014.

Respectfully,

James C. Bobick, Chair

(12 CCR 2511-1)

**11.000 ~~COLORADO STATE AND VETERANS NURSING HOMES~~ VETERANS COMMUNITY LIVING CENTERS**

**11.100 DEFINITIONS [Rev. eff. 2/1/12]**

"Applicant" means the individual applying for residency in a ~~State or Veterans Nursing Home~~ VETERANS COMMUNITY LIVING CENTER which includes the applicant's legal representative.

"Colorado resident" means an individual who currently resides in Colorado, intends to reside in Colorado permanently and who does not maintain a primary residence in another state.

"Colorado State Veterans Center" means the ~~State Veterans Nursing Home at Homelake~~ VETERANS COMMUNITY LIVING CENTER AT HOMELAKE and the Domiciliary at Homelake located in Monte Vista, Colorado.

"Legal representative" means an individual who has the legal authority to take a particular action on behalf of an applicant or resident.

"Medical leave" means absence of the resident from the ~~Home~~ CENTER due to admittance to a hospital or other institution as defined in the Department of Health Care Policy and Financing rules, Section 8.482.43 (10 CCR 2505-10).

"Surviving spouse" means a person who was married to a Veteran at the time of the Veteran's death, and who has not remarried or held himself or herself out to the public to be the spouse of another person.

"~~State Veterans Nursing Home~~ COMMUNITY LIVING CENTER" means any State nursing home or a nursing home administered under contractual obligation with a party that has been designed and constructed to qualify for federal funds and that is operated so as to qualify for per diem payments from the United States Department of Veterans Affairs.

"Veteran" means a person who served in the active military, naval, or air service, and who was discharged or released there from under conditions other than dishonorable.

**11.110 RESIDENT ELIGIBILITY [Rev. eff. 2/1/12]**

An eligible resident in a ~~State Veterans Nursing Home~~ VETERANS COMMUNITY LIVING CENTER shall:

- A. Be a Colorado resident Veteran; or,
- B. Be a non-Colorado resident Veteran; or,
- C. Be a spouse/surviving spouse of a Colorado resident or non-Colorado resident Veteran; or,
- D. Be a surviving parent whose child(ren) who (all) died while serving in the armed forces of the United States; and,
- E. Be able to be served safely by the reasonable and customary care provided in the ~~State Veterans Nursing Home~~ VETERANS COMMUNITY LIVING CENTER as determined by the ~~Home~~ CENTER's admission staff in conjunction with any applicable state or federal law or regulation.

**11.120 ADMISSION PROCESS, WAIT LIST, AND PRIORITY [Rev. eff. 10/1/07]**

- A. A person seeking admission to a ~~State or Veterans Nursing Home~~ VETERANS COMMUNITY LIVING CENTER may obtain an application form and information describing the application procedures

from the individual ~~Home-CENTER~~. Staff shall provide the applicant with information regarding all required documentation, information and verifications necessary to complete the application when the application is requested.

- B. Staff shall conduct a preadmission screening of the applicant to determine if the applicant meets the eligibility requirements stated in Section 11.110 within five business days of receipt of the application. If the requirements are met, the ~~Home-CENTER~~'s admissions staff shall review the submitted materials as outlined in Section 11.120, C. Once the applicant has been determined eligible, the applicant shall be admitted to the ~~home-CENTER~~ or placed on the home's wait list, if applicable.
- C. Applicants shall provide the following information:
  - 1. A signed admission application, including completed financial information, a functional assessment, medical information and authorization for release of information; and,
  - 2. Verification of eligibility for admission, including proof of discharge from the armed services and a copy of the DD-214 Form, if applicable.
- D. In the event admission is denied, admission's staff shall provide the applicant with information regarding their right to request a review of the denial and the review process. The applicant can request a review of the denial by sending a request in writing to the administrator of the home within thirty (30) calendar days of the date on the applicant's notice of denial. The administrator shall conduct a final review of the admission's staff decision within ten calendar days of receipt from the applicant and shall notify the applicant in writing of the final decision. The decision of the administrator shall constitute final agency action.
- E. If a ~~State or Veterans Nursing Home~~ VETERANS COMMUNITY LIVING CENTER does not have a vacant bed for an approved admission, the applicant shall be placed on a wait list administered by each ~~home-CENTER~~. Wait list protocols shall be based on the following rank:
  - 1. Date of completed application.
  - 2. Applicant is a resident Veteran.
  - 3. Applicant is a non-resident Veteran.
  - 4. Applicant is a spouse/surviving spouse.
  - 5. Applicant is a parent of a child(ren) who (all) died while serving in the United States Armed Forces.
- F. An applicant on the wait list offered admission has ten business days from the date of the written notice of admission to accept or decline admission to the ~~Home-CENTER~~. If the applicant declines the offer of admission, the applicant's name shall be removed from the list, unless the applicant requests to be moved to the bottom of the wait list. If the applicant fails to respond to the offer of admission within ten business days from the date of the written notice, the applicant shall be moved to the bottom of the wait list.
- G. The ~~State or Veterans Nursing Home~~ VETERANS COMMUNITY LIVING CENTER shall require all approved applicants to declare all sources and amounts of monthly income. Staff shall evaluate the financial status of an approved applicant to determine the person's ability to pay toward the cost of care and to calculate the maintenance rate.

**11.130 ~~STATE OR VETERANS NURSING HOME~~ VETERANS COMMUNITY LIVING CENTER RESPONSIBILITIES [Rev. eff. 10/1/07]**

- A. A resident shall be provided with the following information upon admission to a ~~State or Veterans Nursing Home~~ VETERANS COMMUNITY LIVING CENTER:

1. General information about the Home-CENTER, resident care, services and activities available.
  2. Resident Rights as found in Section 25-1-120, C.R.S.
  3. Grievance procedures per the Colorado Department of Public Health and Environment Regulations for long-term care facilities (6 CCR 1011-1).
  4. Other applicable Home-CENTER policies including the Home-CENTER's rates, room reservation policy and charges.
- B. The Home-CENTERS's staff shall review the above stated information with the resident or the resident's legal representative. After reviewing this information, the resident or resident's legal representative shall sign a statement indicating they have received and reviewed the information and agrees to abide by the Home-CENTER's rules and regulations. This statement shall be kept with the resident's admission agreement. If changes occur to the information, the Home-CENTER shall inform the resident and provide a copy of the changes. The resident or resident's legal representative shall sign a statement indicating they have received and reviewed a copy of the changes and agrees to abide by the changes.

#### **11.140 ROOM RESERVATION CHARGES [Rev. eff. 10/1/07]**

- A. The resident or the resident's legal representative shall notify the Home-CENTER twenty-four (24) hours in advance of any planned absences of over ten hours.
- B. A resident whose bed is held during an absence shall be responsible for any charges that accrued before or during the leave period. If the resident or resident's legal representative does not agree in writing to pay the reservation charge, the Home-CENTER may reassign the resident's bed to another resident or discharge the resident and place the resident on the Home-CENTER's wait list.
- C. There shall be no room reservation charge to a Medicaid resident on medical leave if no source of payment, other than the resident's funds, are available and the Home-CENTER's current occupancy is less than ninety percent (90%) of capacity.
- D. Calculation of room reservation charges shall be as follows:
1. For non-Veteran Medicaid residents the room reservation charge shall be the Home-CENTER's current Medicaid per diem rate, less total food and linen service costs as computed from the most recent Med-13 Cost Report submitted to the Colorado Department of Health Care Policy and Financing (HCPF). In no case shall the charge be greater than the per diem rate less TWO DOLLARS (\$2).
  2. For Veteran Medicaid residents the room reservation charge shall be the Home-CENTER's current Medicaid per diem rate less total food and linen service costs as computed from the most recent Med-13 Cost Report submitted to the HCPF. In no case shall the charge be greater than the per diem rate less TWO DOLLARS (\$2). If the resident is absent from the Home-CENTER less than NINETY-SIX (96) hours, the current per diem rate provided by the U.S. Department of Veterans Affairs shall be subtracted from the room charge.

Room reservation charges for a Veteran Medicaid resident, whose absence results in a loss of U.S. Department of Veterans Affairs per diem payment (greater than 96 hours), shall include the current per diem reimbursement provided by the U.S. Department of Veterans Affairs, retroactive to the resident's date of departure.
  3. For private pay residents the room reservation charge shall be the Home-CENTER's private pay daily rate, less the daily total food and linen service costs as computed from the most recent Med-13 Cost Report submitted to HCPF.
  4. Homelake Domiciliary residents shall be allowed thirty (30) days of approved leave per state fiscal year, excluding Medical Leave. Residents absent from the domiciliary over thirty



days per fiscal year may be subject to discharge. The Homelake Domiciliary room reservation charge during any approved leave shall be the resident's current daily rate at the time of leave. At the resident's request, a domiciliary room shall be held for a resident admitted to the nursing Home for up to thirty days at the resident's current daily rate. If the resident fails to return to the facility within thirty days, the resident shall be evaluated for continued stay at the domiciliary. If the resident is not approved for continued stay, the resident shall be given five business days to vacate the Homelake Domiciliary. The resident shall be responsible for the payment of rent through the day of departure.

- E. A bed may be held without charge for an approved applicant for up to two weeks from the date of acceptance of the offer of admission. Bed holds prior to admission may exceed two weeks from the date of acceptance with the approval of the Home-CENTER's administrator; however, the applicant shall be responsible for the daily rate following the first two weeks from the date of acceptance of the offer of admission.

#### **11.150 FINANCIAL INFORMATION [Rev. eff. 10/1/07]**

- A. An applicant or resident shall be the primary source of financial information to determine ability to pay except when management of the applicant's or resident's financial affairs has been designated to the legal representative. If the applicant or resident is not the source of financial information, the reason shall be noted in the financial information file.
- B. Residents shall apply for all federal and state benefits for which they may be eligible within thirty days of admission. The resident's status with the Home-CENTER and eligibility for continued care shall not be affected if the resident is denied benefits.

#### **11.160 MAINTENANCE RATES – PAYMENT FOR CARE [Rev. eff. 10/1/07]**

- A. Pursuant to Section 26-12-108, C.R.S., the Department shall establish rates for care of residents as nearly equal to the cost of operation and maintenance of the Homes-CENTERS as practicable.
- B. Current rates shall be given to each applicant. Each Home-CENTER shall send a written notice of any increase in proposed rates to each resident no later than fourteen business days prior to the effective date of the new rate.
- C. Each Home-CENTER shall have the authority to request pre-payment from a resident.

#### **11.170 PAST DUE ACCOUNTS [Rev. eff. 10/1/07]**

- A. A resident's account shall be deemed past due if the debt has not been paid by the close of business on the due date. The due date is ten calendar days from the end of the month for which a resident resided at the Home-CENTER. Interest may be accrued on accounts which are thirty days past due, and may be referred to the State Controller for collection.
- B. Discharge proceedings may be instituted per the Colorado Department of Public Health and Environment Regulations for long-term care facilities (6 CCR 1011-1) when an account is past due. Discharge proceedings shall be stopped if full payment is received by Home-CENTER prior to the discharge taking place.

#### **11.200 BURIAL AT THE COLORADO STATE-VETERANS COMMUNITY LIVING CENTER-AT HOMELAKE [Rev. eff. 5/1/13]**

- A. Current cemetery operation protocols shall remain in effect until such time as adequate moneys are available to fund construction of the northernmost triangular parcel of the cemetery in its entirety. Adequate moneys shall include funds for surveys, design, testing and inspection, code review, and construction.
- B. "Reservation" means the ability of an honorably discharged veteran, who is a Colorado resident, to reserve space in the cemetery for himself/herself and his/her spouse.

1. Reservations shall be contingent upon receipt of one-half of the published U.S. Department of Veterans Affairs burial benefit at the time of the reservation.
  2. Reservations shall begin upon completion of the construction of the triangular northernmost parcel of the cemetery. Eligible individuals may place their names on a waitlist for reservations until such time as construction is complete.
  3. Any person who has made a reservation with the Department on or before May 3, 2012, shall retain such right to reservation.
- C. Site selection shall be at the discretion of the Colorado ~~State Veterans Center~~ VETERANS COMMUNITY LIVING CENTER at Homelake.
- D. Only upright marble markers or headstones furnished by U.S. Department of Veterans Affairs shall be permitted.

**11.300 LOCAL ADVISORY BOARD [Rev. eff. 10/1/07]**

- A. Each ~~State and Veterans Nursing Home~~ VETERANS COMMUNITY LIVING CENTER shall institute a local advisory board. The local advisory board shall ensure appropriate communication channels are in place between the ~~Home-CENTER~~, the local community, and other stakeholder groups in order to resolve issues or celebrate successes at the earliest opportunity.
- B. The local advisory board shall consist of a minimum five members, at least one of the members shall be a resident of the ~~Home-CENTER~~ or a person who at the time of his or her appointment is a family member of a resident at the ~~Home-CENTER~~.
- C. The local advisory board shall submit a year-end report to the Office Director of the ~~State and Veterans Nursing Homes~~ VETERANS COMMUNITY LIVING CENTERS by July 30 of each year beginning in 2008. The year-end report shall summarize board activities, member concerns, resident concerns, staffing vacancies, accomplishments and any other issues the board deems appropriate.

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## **Permanent Rules Adopted**

### **Department**

Department of Personnel and Administration

### **Agency**

Office of Administrative Courts

### **CCR number**

1 CCR 104-1

### **Rule title**

1 CCR 104-1 PROCEDURAL RULES 1 - eff 09/30/2014

### **Effective date**

09/30/2014

# **DEPARTMENT OF PERSONNEL AND ADMINISTRATION**

## **OFFICE OF ADMINISTRATIVE COURTS**

### **PROCEDURAL RULES**

1 CCR 104-1

#### **Preamble**

Unless otherwise noted in a specific provision, the Office of Administrative Courts Procedural Rules were adopted in their entirety by the Department of Personnel & Administration on February 2, 2009.

This version reflects rulemaking by the Director to amend the Office of Administrative Courts Procedural Rules as follows: changes to Rule 1.B.3., 1.B.4., 1.E.; Rule 5; Rule 7; Rule 8.A., 8.B.; Rule 9.C., 9.D.; Rule 10B; Rule 13A, 13B, 13C; Rule 22; Rule 23.A.; Appendix A, VIII; and added the following Rule and Appendix: Rule 28; Appendix B effective September 30, 2014.

#### **Rule 1. Scope of Rules.**

A. Except as otherwise ordered by the administrative law judge and except as excluded below, these rules apply to the conduct of all cases before the Office of Administrative Courts, Colorado Department of Personnel, whether contested or not.

B. These rules do not apply to:

1. Juvenile and adult parole proceedings.
2. Disputes concerning workers' compensation.
3. Permanency hearings pursuant to Sec. 475 (5)(C) of the Social Security Act, 42 U.S.C. 675.

C. Rules 4-6, 8-17, 19, 21 and 26 are excluded from application to cases before the Colorado Department of Human Services, the Colorado Department of Health Care Policy and Financing, or any County Department of Social or Human Services pertaining to appeals by applicants for or recipients of public assistance, medical assistance ("Medicaid") or food stamps and to intentional program violation proceedings.

D. Rule 4 does not apply to cases before the State Department of Human Services concerning confirmed reports of child abuse and neglect as described in 12 C.C.R. 2509-3.

E. Unless otherwise ordered by the administrative law judge, Rules 4 and 13 do not apply to the following cases:

1. Campaign and political finance cases pursuant to Colo. Const., art. XXVIII, and the Fair Campaign Practices Act, Section 1-45-101 et seq., C.R.S.
2. Proceedings pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. Sections 1400 et seq.
3. Cases pursuant to the Teacher Employment, Compensation, and Dismissal Act, Section 22-63-101 et seq., C.R.S.

F. When a statute, rule or regulation of any agency on whose behalf a hearing is being conducted by an administrative law judge is in conflict with or inconsistent with these rules, the statute, rule or regulation of the agency shall take precedence.

## Rule 2. Definitions and Rules of Construction.

A. As used in these rules, the following words have the following meanings:

1. "Agency" shall have the same meaning as set forth in Section 24-4-102(3), C.R.S.
2. "OAC" means the Office of Administrative Courts created in the Colorado Department of Personnel and Administration by Section 24-30-1001(1), C.R.S.
3. "Administrative law judge" means an administrative law judge appointed pursuant to Section 24-30-1003, C.R.S.
4. "Expanded media coverage" means any photography, video or audio recording of proceedings.

B. As used in these rules the following rules of construction shall apply unless the context otherwise requires:

1. Words in the singular shall include the plural and words in the plural shall include the singular.
2. These rules shall be liberally construed to secure the just, speedy and inexpensive determination of all matters presented to the OAC.
3. Appendices to these rules are considered to be part of these rules.
4. References in agency rules to the OAC's former name, the Division of Administrative Hearings, will be treated as references to the OAC.

## Rule 3. Referral and Assignment of Cases.

Where an agency is given statutory authority to appoint an administrative law judge, to have its hearings conducted by an administrative law judge or in any way to refer a matter to an administrative law judge, the agency's action, or a party's action pursuant to statute or regulation, in filing pleadings with the OAC or in requesting a setting of any hearing dates by the OAC will be considered the appointment of or referral to an administrative law judge. Administrative law judges will be assigned to cases by the Director of the OAC or by the designee of the Director.

#### Rule 4. Setting of Hearings or Other Proceedings.

When any party requests a hearing before the OAC, it shall be the responsibility of the agency or its counsel promptly to file and serve a notice to set a hearing on the merits, unless otherwise ordered by the administrative law judge. The agency or its counsel shall obtain a setting date from the OAC. When a statute or rule requires a more expedited setting, or at the discretion of the administrative law judge, the hearing on the merits may be set at any time. A notice to set any proceeding made by any party must be filed with the OAC and served upon all persons entitled to notice of the setting at least 5 days prior to the date of the setting. For the purpose of setting any matter, a party or a party's representative may appear at the OAC at the time established for the setting or may telephone the OAC at such time. Hearing dates will be set whether or not the parties participate at the setting. A prompt hearing on the merits will be set within 90 days from the setting date, unless otherwise ordered.

#### Rule 5. Entry of Appearance and Withdrawal of Counsel.

Entries of Appearance and Withdrawals of Counsel shall be in conformance with C.R.C.P. 121 § 1-1. Any out-of-state attorney shall comply with C.R.C.P. 221.1. Rule 5 does not apply to a substitution of counsel if new counsel enters an appearance at the same time as prior counsel withdraws.

#### Rule 6. Expanded Media Coverage.

1. Expanded media coverage of cases before the OAC may be permitted at the discretion of the administrative law judge, under such conditions as the administrative law judge may designate. In determining whether expanded media coverage should be permitted, the administrative law judge shall consider the following factors:

A. Whether there is a reasonable likelihood that expanded media coverage would interfere with the rights of the parties to a fair hearing;

B. Whether there is a reasonable likelihood that expanded media coverage would unduly detract from the solemnity, decorum and dignity of the proceedings;

C. Whether expanded media coverage would create adverse effects that would be greater than those caused by traditional media coverage.

#### Rule 7. Consolidation.

A party seeking consolidation of two or more cases shall file a motion to consolidate in each case sought to be consolidated. If consolidation is ordered, and unless otherwise ordered by the administrative law judge, all subsequent filings shall be in the case first filed and all previous filings related to the consolidated cases shall be placed together under that case number. Consolidation may be ordered on an administrative law judge's own motion.

#### Rule 8. Default Procedures.

A. A person who receives notice of an agency adjudicatory hearing is required to file a written answer within 30 days after the service or mailing of notice of the proceeding. If a person receiving such notice fails to file an answer, an administrative law judge may enter a default against that person. Section 24-4-105(2)(b), C.R.S.

B. An administrative law judge will not grant a motion for entry of a default under this statutory provision unless the following requirements are met:

1. The motion for entry of a default must be served upon all parties to the proceeding, including the person against whom a default is sought.
2. The motion shall be accompanied by an affidavit establishing that both the notice of the proceeding and the motion for entry of default have been personally served upon the person against whom a default is sought, or have been mailed by first class mail to the last address furnished to the agency by the person against whom the default is sought.
3. Any motion for entry of default requesting a fine or civil penalty shall set forth the legal authority for the claim and any applicable calculation thereof.

#### Rule 9. Discovery.

A. To the extent practicable, C.R.C.P. 26 through 37 and 121, Section 1-12 and the duty to confer at Section 1-15(8) apply to proceedings within the scope of these rules, except to the extent that they provide for or relate to required disclosures, or the time when discovery can be initiated. Discovery may be conducted by any party without authorization of the administrative law judge.

B. C.R.C.P. 16 does not apply to proceedings before the OAC.

C. In addition to the requirements of C.R.C.P. 36, a request for admission shall explicitly advise the party from whom an admission is requested that failure to timely respond to the request may result in all of the matters stated in the request being deemed established unless the administrative law judge on motion permits withdrawal or amendment of the admission. The failure to comply with this rule may result in the matters contained in the request being deemed denied.

D. Discovery requests and responses should not be filed with the OAC, except to the extent necessary for the administrative law judge to rule upon motions involving discovery disputes.

E. Either party may move to modify discovery deadlines and limitations pursuant to Rule 13.

#### Rule 10. Determination of Motions.

A. Any motion involving a contested issue of law shall be supported by a recitation of legal authority. References to agency rules shall include the appropriate Colorado Code of Regulations citation. References to any superceded rules shall be accompanied by a copy of such rules. A responding party shall have 10 days from service or such lesser or greater time as the administrative law judge may allow in which to file and serve a responsive brief. Reply briefs will be permitted only upon order of the administrative law judge. If so ordered, the reply brief must be filed within 5 days of the order of the administrative law judge.

B. If facts not appearing of record before the administrative law judge are to be considered in disposition of the motion, the parties may file affidavits at the time of filing the motion or responsive or reply brief. Copies of such affidavits and any documentary evidence used in connection with the motion shall be served on all other parties.

C. If the moving party fails to incorporate legal authority into the motion and fails to file a separate brief with the motion, the administrative law judge may deem the motion abandoned and may enter an order denying the motion. Failure of the responding party to file a responsive brief may be considered a confession of the motion.

D. If possible, motions will be determined upon the written motion and briefs submitted. The administrative law judge may order oral argument or evidentiary hearing on the administrative law judge's own motion or on request of a party. If any party fails to appear at an oral argument or hearing without prior showing of good cause for non-appearance, the administrative law judge may proceed to hear and rule on the motion.

E. An expedited hearing on any motion may be held at the instance of the administrative law judge. If any party requests that a motion be determined immediately



with or without a hearing, or that a hearing be held on a motion in advance of a previously set motions date, that party shall:

1. Inform the administrative law judge in writing of said request.
2. Contact all other parties, determine their position on the motion, and indicate on the face of the motion whether other parties oppose the motion and whether they will request a hearing on the motion.
3. If a hearing is desired by any party and authorized by the administrative law judge, the moving party, upon advance notice to the administrative law judge or the docket clerk, shall notice in all other parties to set the matter directly with the administrative law judge on an expedited basis.

F. Parties shall comply with C.R.C.P. 12 unless otherwise ordered by the administrative law judge for good cause shown.

#### Rule 11. Place of Hearing.

All cases within the scope of these rules will be heard at the OAC in Denver. The administrative law judge for good cause shown may change the place of hearing when the convenience of witnesses and parties and the ends of justice will be promoted by the change.

#### Rule 12 Mediation Conferences.

At any time after a proceeding is initiated, any party may file with the administrative law judge and serve upon all other parties a request for a mediation conference. If the request is granted, the conference shall be conducted by any available administrative law judge other than the assigned administrative law judge. All of the discussions at the mediation conference shall remain confidential and shall not be disclosed to the administrative law judge assigned to the case. Statements at the mediation conference shall not be admissible evidence for any purpose in any other proceeding. Participation in a mediation conference shall constitute an agreement by all parties and attorneys not to call the administrative law judge conducting the mediation as a witness to the matters discussed in the mediation conference in any subsequent proceeding. An administrative law judge may require a mediation conference on the administrative law judge's own motion.

### Rule 13. Prehearing Procedures, Statements and Conferences.

A. Unless otherwise ordered by the administrative law judge, each party shall file with the administrative law judge and serve on each other party a prehearing statement in substantial compliance with the form as outlined in Appendix A to these rules. Prehearing statements shall be filed and served no later than 30 days prior to the date set for hearing or such other date established by the administrative law judge. Exhibits shall not be filed with prehearing statements, unless ordered by the administrative law judge. Exhibits shall be exchanged between the parties by the date on which prehearing statements are to be filed and served on such other date as ordered by the administrative law judge.

1. The authenticity of exhibits, statutes, ordinances, regulations or standards set forth in the prehearing statement shall be admitted unless objected to in a written objection filed with the administrative law judge and served on other parties no later than 10 days prior to hearing.

2. The information provided in a prehearing statement shall be binding on each party throughout the course of the hearing unless modified to prevent manifest injustice. New witnesses or exhibits may be added only if the need to do so was not reasonably foreseeable at the time of filing of the prehearing statement and then only if it would not prejudice other parties or necessitate a delay of the hearing. An agency shall use numbers to identify exhibits and any opposing party shall use letters.

3. In the event of noncompliance with this rule, the administrative law judge may impose appropriate sanctions including, but not limited to, the striking of witnesses, exhibits, claims and defenses.

B. Prehearing conferences may be held at the request of either party or upon motion of the administrative law judge.

C. A case management conference shall be held at the request of either party or at the discretion of the administrative law judge. The party requesting the case management conference shall confer with all other parties as necessary upon the content of the proposed case management order. An example of a format for a case management order appears at Appendix B. The party requesting the case management conference shall submit the proposed case management order to the OAC no later than 3 days before the case management conference.

#### Rule 14. Rules of Evidence.

To the extent practicable, the Colorado Rules of Evidence apply in all hearings conducted by the OAC. Unless the context requires otherwise, whenever the word “court”, “judge” or “jury” appears in the Colorado Rules of Evidence such word shall be construed to mean an administrative law judge. An administrative law judge has the discretion to admit evidence not admissible under such rules, as permitted by Section 24-4-105(7), C.R.S. or other law.

#### Rule 15. Rules of Civil Procedure.

To the extent practicable, and unless inconsistent with these rules, the Colorado Rules of Civil Procedure apply to matters before the OAC. Unless the context otherwise requires, whenever the word “court” appears in a rule of civil procedure, that word shall be construed to mean an administrative law judge. The following do not apply:

A. C.R.C.P. 16.

B. The filing deadlines for motions and cross motions for summary judgment set forth in C.R.C.P. 56(c).

#### Rule 16. Files and Hearings Open to the Public.

All files shall be open to public inspection, unless otherwise prohibited by law, regulation or court order, or when upon motion and order the agency or administrative law judge otherwise has the authority or discretion to prohibit public inspection. All hearings shall be open to the public unless prohibited by law, regulation or court order or closed by order of the administrative law judge or the agency.

#### Rule 17. Motions for Continuance.

A. Continuances shall be granted only upon a showing of good cause. Motions for continuance must be filed in a timely manner. Stipulations for a continuance shall not be effective unless and until approved by the administrative law judge.

B. Good cause may include but is not limited to: death or incapacitation of a party or an attorney for a party; a court order staying proceedings or otherwise necessitating a continuance; entry or substitution of an attorney for a party a reasonable time prior to the hearing, if the entry or substitution reasonably requires a postponement of the hearing; a change in the parties or pleadings sufficiently significant to require a postponement; a showing that more time is clearly necessary to complete authorized discovery or other mandatory preparation for the hearing; or agreement of the parties to a settlement of the case which has been or will likely be approved by the final decision maker.

C. Good cause normally will not include the following: unavailability of counsel because of engagement in another judicial or administrative proceeding, unless the other proceeding was involuntarily set subsequent to the setting in the present case; unavailability of a necessary witness, if the witness's testimony can be taken by telephone or by deposition; or failure of an attorney or a party timely to prepare for the hearing.

#### Rule 18. Subpoenas.

A. Upon oral or written request of any party or of counsel for any party, an administrative law judge shall sign a subpoena or subpoena duces tecum requiring the attendance of a witness or the production of documentary evidence, or both, at a deposition or hearing. Unless otherwise provided by agency statute, rule or regulation, practice before the OAC regarding subpoenas shall be governed by C.R.C.P. 45.

B. Staff persons of the OAC are authorized to use a stamp signature or to otherwise duplicate the signature of an administrative law judge on subpoenas completed by the parties. However, no other party or person may duplicate the signature of an administrative law judge. Subpoenas issued in contravention of this rule are invalid and may subject the party using them to sanctions.

C. Any attorney representing a party to a proceeding before the OAC may issue a subpoena or subpoena duces tecum requiring the attendance of a witness or the production of documentary evidence, or both, at a deposition or hearing.

#### Rule 19. Settlements.

Parties shall promptly notify the administrative law judge of all settlements, stipulations, agency orders or any other action eliminating the need for a hearing. An agency shall file a motion to dismiss when a case has settled.

#### Rule 20. Ex Parte Communications.

With the exception of scheduling or other purely administrative matters, and with the exception of mediation processes, a party or counsel for a party shall not initiate any communication with an administrative law judge pertaining to a matter before the OAC unless prior consent of all other parties or their counsel has been obtained. Copies of all pleadings or correspondence filed with the OAC or directed to an administrative law judge by any party shall be served upon all other parties or their counsel.

#### Rule 21. Procedure in Summary Suspension Matters.

A. All deadlines and procedures set forth herein or in the Colorado Rules of Civil Procedure may be modified as necessary to afford the right to a prompt hearing.

B. In all matters involving a summary suspension, the agency shall immediately file a charging document and a Notice to Set the hearing on the merits with the OAC. The Notice to Set shall contain a setting date obtained from the OAC that provides advance notice to the opposing party at least 5 days but no more than 10 days from the Notice to Set.

C. The Notice to Set shall provide the telephone number and address of the OAC. The Notice to Set shall prominently inform the opposing party of its right to an expedited hearing and of the option to request a prehearing conference before an administrative law judge.

D. Either party may request in writing a prehearing conference before an administrative law judge in a summary suspension case. The purpose of the prehearing conference shall be to arrange for expedited disclosures, discovery schedules, motion dates, and further prehearing conferences as necessary.

E. In any case in which hearing is set 45 days or fewer from the date of the setting, the OAC will set a prehearing conference.

#### Rule 22. Computation and Modification of Time.

In computing any period of time prescribed or allowed by these rules, the provisions of C.R.C.P. 6 shall apply. The time periods of these rules may be modified at the discretion of the administrative law judge.

#### Rule 23. Filing of Pleadings and Other Papers.

A. Pleadings and other papers may be filed by mail, by e-mail, or by facsimile subject to Rule 24.

B. After the OAC has assigned a case number to a matter, all pleadings and papers filed with the OAC shall contain that case number.

#### Rule 24. Filing of Pleadings and Other Papers by Facsimile Copy.

A. The facsimile capabilities of the OAC are limited. Parties are encouraged to avoid filing pleadings by facsimile copy, except when reasonably required by time constraints.

B. Subject to the limitations of Rule 24(C), facsimile copies may be filed with the OAC in lieu of the original document. If a facsimile copy is filed in lieu of the original document, the attorney or party filing the facsimile copy shall retain the original document for production to the administrative law judge, if requested. If an original or copy of a pleading in addition to the facsimile filing is filed with the OAC the additional copy or original may be discarded and not made part of the OAC file.

C. Pleadings or other documents in excess of 10 pages (excluding the cover sheet) may not be filed by facsimile copy in lieu of the original document unless otherwise ordered by the administrative law judge.

D. Facsimile copies shall be accompanied by a cover sheet that states the title of the document, case number, number of pages, identity and voice telephone number of the transmitter and any instructions.

#### Rule 25. Service of Pleadings and Other Papers.

A. Service of pleadings or other papers on a party or on an attorney representing a party may be made by hand delivery, by mail to the address given in the pleadings, by facsimile transmission to a facsimile number given in the pleadings, or to the party's last known address, or with agreement of the parties, by e-mail. When a party is represented by an attorney, service shall be made on the attorney.

B. Pleadings or other papers sent to the OAC must contain a certificate of service attesting to service on the opposing party and in the case of service by mail providing the address where pleadings or other papers were served.

C. Attorneys and parties not represented by attorneys must inform the OAC and all other parties of their current address and of any change of address during the course of the proceedings.

#### Rule 26. Testimony by Telephone or Other Electronic Means.

A. Upon motion of any party the administrative law judge may conduct all or part of a hearing by telephone or videophone. The motion must be filed sufficiently prior to hearing to permit a response and ruling pursuant to OAC Rule 10.

B. All arrangements for the taking of testimony by telephone or videophone shall be made by the party requesting such testimony, who shall be responsible for all costs associated with the testimony.

C. Exhibits and other documents that will be used or referred to during all or part of a hearing conducted by telephone or other electronic means must be filed with the OAC and, unless previously supplied, provided to all other parties at least two days before the hearing. Exhibits necessary to the testimony of a witness must be provided to the witness prior to the witness's testimony.

#### Rule 27. Court Reporters.

A. The OAC does not supply court reporters. If any party wishes to have all or a portion of a proceeding transcribed by a court reporter, that party may make private

arrangements to do so at that party's own expense. The recording of any proceeding made electronically by the OAC shall be the official record.

B. A request to the OAC for a recording must be in writing and must contain the case number and the date and time of the hearing or conference.

#### Rule 28. Exhibit Notebooks

Whenever a party is represented by an attorney, that party shall supply an exhibit list and three notebooks of tabbed exhibits at the commencement of every merits hearing. The notebooks shall be for the administrative law judge, the opposing party and the testifying witness. All documentary exhibits listed in such party's prehearing statement, unless they are too lengthy, shall appear in the exhibit notebooks.

## **APPENDIX A**

### **OUTLINE FOR PREHEARING STATEMENT**

The following shall be included in each party's Prehearing Statement:

- I. **PENDING MOTIONS.** A list of all outstanding motions that have not been ruled upon by the administrative law judge.
- II. **STATEMENT OF CLAIMS AND DEFENSES.** A concise statement of all claims or defenses asserted by all parties, together with all matters in mitigation or aggravation.
- III. **UNDISPUTED FACTS.** A concise statement of all facts that the party contends are or should be undisputed.
- IV. **DISPUTED ISSUES OF FACT.** A concise statement of the material facts that the party claims or concedes to be in dispute.
- V. **POINTS OF LAW.** A concise statement of all points of law that are to be relied upon or that may be in controversy, citing pertinent statutes, regulations, cases and other authority. Extended legal argument is not required but may be reserved for a trial brief at the option of the party.
- VI. **WITNESSES.** The name, address and telephone number of any witness or party whom the party may call at hearing, together with a detailed statement of the content of that person's testimony.
- VII. **EXPERTS.** The name, address and brief summary of the qualifications of any expert witness a party may call at hearing, together with a statement that details the opinions to which each expert is expected to testify. These requirements may be satisfied by the incorporation of an expert's resume or report containing the required information.
- VIII. **EXHIBITS.** A description of any physical or documentary evidence to be offered into evidence at the hearing. An agency shall use numbers to identify exhibits and any opposing party shall use letters.
- IX. **STIPULATIONS.** A listing of all stipulations of fact or law reached, as well as a listing of any additional stipulations requested or offered to facilitate disposition of the case.
- X. **TRIAL EFFICIENCIES.** An estimate of the amount of time required to try the case.



## APPENDIX B

### OUTLINE FOR CASE MANAGEMENT ORDER

A case management conference was held on \_\_\_\_\_ at which the following schedule and deadlines were ordered:

#### Hearing:

The hearing has been scheduled for \_\_\_\_\_ through \_\_\_\_\_ at the Office of Administrative Courts starting at 9:00 a.m..

#### Discovery:

1. Discovery cutoff, including completion of expert and fact witness depositions and receipt of all written discovery: \_\_\_\_\_
2. The numerical limits on interrogatories, requests for production, and requests for admission set forth in C.R.C.P. 26 (b)(2) are/are not adopted. The numerical limits in depositions set forth in C.R.C.P. 26 (b)(2)(A) are/are not adopted.
3. Other discovery issues

#### Expert Disclosures:

1. The Agency's initial disclosure of expert witnesses: \_\_\_\_\_
2. The opposing party's initial disclosure of expert witnesses: \_\_\_\_\_
3. Rebuttal experts: \_\_\_\_\_
4. Expert disclosures shall be filed with the administrative law judge, as well as served on the opposing party.

#### Prehearing Statements:

(Set out any modifications to the content of the prehearing statements.)

#### Motions Deadline:

1. Dispositive motions: \_\_\_\_\_ Responses: \_\_\_\_\_
2. All other prehearing motions to the extent that the basis for the motion is reasonably known: \_\_\_\_\_ Response: \_\_\_\_\_

#### Service:

(Set out any agreement or order as to the method of service, i.e., by e-mail, mail, or other method. Set out whether extra time for mailing is permitted.)

**Filing:**

(Set out any agreement or order as to the method of filing, i.e., by e-mail, mail, or other method. Set out whether extra time for mailing is permitted.)

**Prehearing Conference:**

A motions hearing/final prehearing conference is set for \_\_\_\_\_ at \_\_\_\_\_ a.m./p.m. at the Office of Administrative Courts.

**DONE AND SIGNED**

(date)

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(NAME)

Administrative Law Judge

**John W. Suthers**

Attorney General

**Cynthia H. Coffman**

Chief Deputy Attorney General

**Daniel D. Domenico**

Solicitor General



**Ralph L. Carr**

Colorado Judicial Center

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Denver, CO 80203

Phone 720-508-6000

**State of Colorado  
Department of Law  
Office of the Attorney General**

Tracking number: 2014-00530

**Opinion of the Attorney General rendered in connection with the rules adopted by the  
Office of Administrative Courts**

**on 08/01/2014**

1 CCR 104-1

**PROCEDURAL RULES**

The above-referenced rules were submitted to this office on 08/01/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

August 21, 2014 10:16:22

A handwritten signature in black ink, appearing to read "JWS", is written over a horizontal line.

**John W. Suthers**

Attorney General

by Daniel D. Domenico

Solicitor General

## **Permanent Rules Adopted**

### **Department**

Department of Natural Resources

### **Agency**

Colorado Parks and Wildlife (406 Series, Wildlife)

### **CCR number**

2 CCR 406-5

### **Rule title**

2 CCR 406-5 CHAPTER W-5 - MIGRATORY BIRDS 1 - eff 10/01/2014

### **Effective date**

10/01/2014

**FINAL REGULATIONS - CHAPTER W-5 – MIGRATORY BIRDS**

**ARTICLE I – GENERAL PROVISIONS**

**#500 – DEFINITIONS:**

- A. "Migratory birds" means those migratory birds included in the terms and conventions between the United States and any foreign country for the protection of migratory birds.
- B. "Migratory game birds" means sora, Virginia rail, sandhill crane, Wilson's snipe, mourning dove, white-winged dove, band-tailed pigeon, crows, ducks, coots, and geese.
- C. "Waterfowl" means ducks and geese.
- D. "Dark geese" means Canada geese, white-fronted geese, brant, and all other species of geese except light geese.
- E. "Light geese" means snow (including blue) geese, and Ross' geese.
- F. "Manipulation" means the alteration of natural vegetation or agricultural crops by activities that include but are not limited to mowing, shredding, discing, rolling, chopping, trampling, flattening, burning, or herbicide treatments. Manipulation does not include the distributing or scattering of grain, seed, or other feed after removal from or storage on the field where grown.
- G. "Natural vegetation" means any non-agricultural, native, or naturalized plant species that grows at a site in response to planting or from existing seeds or other propagules. Natural vegetation does not include planted millet. However, planted millet that grows on its own in subsequent years after the year of planting is considered natural vegetation.
- H. "Normal agricultural operation" means a normal agricultural planting, harvesting, post-harvest manipulation or agricultural practice that is conducted in accordance with 50 C.F.R. 20.11 (U.S. Fish and Wildlife Service, October 1, 2013).
- I. "Normal agricultural planting, harvesting, or post-harvest manipulation" means a planting or harvesting undertaken for the purpose of producing and gathering a crop, or manipulation after such harvest and removal of grain, that is conducted in accordance with 50 C.F.R. 20.11 (U.S. Fish and Wildlife Service, October 1, 2013).
- J. "Normal soil stabilization practice" means a planting for agricultural soil erosion control or post-mining land reclamation conducted in accordance with 50 C.F.R. 20.11 (U.S. Fish and Wildlife Service, October 1, 2013).
- K. "Non-toxic shot" means any shot type approved for use to take migratory game birds by the US Fish and Wildlife Service in 50 C.F.R. 20.21, October 1, 2013. This federal regulation, but not later amendments to or editions thereof, has been incorporated by reference and can be viewed and copies obtained as set forth in the "Incorporated References" section of Chapter 0 of these regulations.
- L. "Sinkbox" means a raft or any type of low floating device having a depression which affords a hunter a means of concealing himself below the surface of the water.

**#501 – HUNTING HOURS**

- A. One-half (1/2) hour before sunrise to sunset, except as otherwise provided in this chapter.

## **#502 – MANNER OF TAKING**

The following are legal methods of take for game species listed in this chapter. Any method of take not listed herein shall be prohibited, except as otherwise provided by statute or Commission regulation.

### **A. Waterfowl and other migratory game birds:**

1. Shotgun - Any shotgun not larger than 10 gauge, not firing single slugs and incapable of holding more than three (3) shells in the magazine and chamber combined and fired from the shoulder. Shotguns of any description originally capable of holding more than three (3) shells total capacity shall have the magazine so cut off, altered or plugged with a one-piece filler which is incapable of removal without disassembling the gun, so as to reduce the total gun capacity to hold no more than three (3) shells in the magazine and chamber combined.
2. Hand-held bow - With any hand-held bow provided that the arrow or bowstring is not held or drawn mechanically, except no bows may be used on any firing line designated by the Commission.
3. Blinds - In the open or from a blind or other place of concealment on land or water except a sink box. When camouflaged with vegetation from agricultural crops, such camouflaging must not result in the exposing, depositing, distributing or scattering of grain or other feed.
4. Vessels - From or by means of any vessel (excluding a sinkbox) having a motor or sails attached when the motor has been shut off and/or the sails furled, and its progress therefrom has ceased or from a vessel that is drifting or being propelled by hand, or by the aid of a vessel when used solely as a means of picking up dead or injured birds.
5. Hawking or Falconry - By means of hawking or falconry.
6. Decoys, dogs, and calls - By the aid of a dog, artificial decoys, or with the aid and use of birdcalls except recorded or electrically amplified calls or sounds, unless their use has been authorized elsewhere in this chapter.

### **B. Non-toxic shot requirements**

1. Shot size - No person shall possess or use non-toxic shot of size larger than size T while taking or attempting to take ducks, geese, or coots anywhere in Colorado.
2. Statewide, including all counties in Colorado in both the Central and Pacific flyways;
  - a. No person shall use or possess shot (either in shot-shells or as loose shot for muzzle-loading) other than non-toxic shot while taking or attempting to take ducks, geese or coots.
3. Non-toxic shot is required on commercial wildlife parks, during field trials, and during dog training activities when taking captive-reared mallards in Colorado.

### **C. Prohibition of baiting**

1. Migratory game birds and waterfowl may not be taken by the aid of baiting, or on or over any baited area, if the person knows or reasonably should know that the area is a baited area. It is unlawful to place or direct the placement of bait on or adjacent to an area for

the purpose of causing, inducing, or allowing any person to take or attempt to take any migratory game bird by the aid of baiting or on or over the baited area.

2. As used in this sub-paragraph "baiting" means the direct or indirect placing, exposing, depositing, distributing or scattering of salt, grain, or other feed that could serve as a lure or attraction for migratory game birds to, on or over any areas where hunters are attempting to take them. "Baited area" means any area on which salt, grain, or other feed has been placed, exposed, deposited, distributed, or scattered, if that salt, grain, or other feed could serve as a lure or attraction for migratory game birds to, on, or over areas where hunters are attempting to take them. Any such area will remain a baited area for ten days following the complete removal of all such salt, grain, or other feed.
3. Nothing in this regulation shall prohibit the taking of any migratory game bird, including waterfowl, coots, and cranes, on or over the following lands or areas that are not otherwise baited areas:
  - a. Standing crops or flooded standing crops (including aquatics); standing, flooded, or manipulated natural vegetation; flooded harvested croplands; or lands or areas where seeds or grains have been scattered solely as the result of a normal agricultural planting, harvesting, post-harvest manipulation or normal soil stabilization practice; or standing or flooded standing agricultural crops where grain is inadvertently scattered solely as a result of a hunter entering or exiting a hunting area, placing decoys, or retrieving downed birds.
4. Nothing in this regulation shall prohibit the taking of any migratory game bird, except waterfowl, coots, and cranes, on or over the following lands or areas that are not otherwise baited areas:
  - a. Areas where grain or other feed has been distributed or scattered solely as the result of the manipulation of an agricultural crop or other feed on the land where grown, or solely as the result of a normal agricultural operation.

### **#503 – LICENSE AND STAMP REQUIREMENTS**

#### **A. License required**

1. A small game license is required to take all migratory game birds listed in #500(B) for which an open season exists.
2. Each hunter must call 1-866-COLOHIP (1-866-265-6447) or register online ([www.colohip.com](http://www.colohip.com)) prior to their first hunting trip of the season to register their intent to hunt migratory birds, and to obtain permit numbers if hunting band-tailed pigeons or sandhill cranes, and to provide harvest information for the previous season. "Season" means the period September 1 through March 15.

#### **B. Federal Migratory Bird Hunting and Conservation Stamp**

Except as otherwise provided in this chapter, no person who has attained the age of sixteen (16) years shall take any migratory waterfowl (ducks, geese and swans) unless at the time of such taking they have on their person an unexpired Federal Migratory Bird Hunting and Conservation Stamp (commonly called duck stamp), validated by their signature written across the face of the stamp in ink, or an electronic stamp issued through the Total Licensing System that provides a receipt as proof of purchase. This proof of purchase contains a unique code given to the purchaser instantly, and constitutes valid proof of purchase of a Federal Migratory Bird Hunting and Conservation Stamp for a period not to exceed 45 days from the date of purchase.

#### **C. Colorado State Waterfowl Hunting Stamp**

In addition to the Federal Migratory Bird Hunting and Conservation Stamp, no person who has attained the age of sixteen (16) years shall take any migratory waterfowl (ducks and

geese) unless they possess and carry on their person a valid Colorado State Waterfowl Hunting Stamp, validated by their signature written, in ink, across the face of the stamp.

1. A Colorado State Waterfowl Stamp may be obtained for collection or personal purposes, but shall not serve as the required state stamp for waterfowl hunting purposes.

#### D. Walk-In Access

1. Public Access is prohibited from 1 hour after sunset to 1 hour before sunrise, except that when hunting waterfowl public access is prohibited from two (2) hours after sunset to two (2) hours before sunrise.
2. Species of take will be restricted as follows:
  - a. Lands enrolled and posted as Regular, Late Cropland or Extended Season Walk-In Access Properties are open for the take of all small game, furbearers, and migratory game birds, except Gambel's quail, Gunnison's sage grouse and Greater sage grouse.
3. Public access is allowed:
  - a. From September 1 through the end of February annually for lands enrolled and posted as Regular Season Walk-In Access properties;
  - b. From the opening day of pheasant season through the end of February annually for lands enrolled and posted as Late Season Cropland Walk-In Access properties, and;
  - c. From the opening day of pheasant season through the end of March annually for lands enrolled and posted as Extended Walk-In Access properties.
  - d. From the opening day of pheasant season through the end of February annually, for lands enrolled and posted as Novice Hunter Program Walk-In Access properties:
    1. A current year's graduate of the Novice Hunter Program must be present and actively hunting with each group during all hunting activities.
    2. Up to four additional hunters may accompany and hunt with a graduate of the Novice Hunter Program.
4. Access shall be by foot only. Entry by horseback, motorized vehicle, or other means is prohibited.
5. Access is allowed for hunting only; all other activities are prohibited.
6. Access is prohibited as posted when the landowner is actively harvesting crops.

See also: walk-in access program provisions in Chapter 3 of these regulations for small game species.

### **#504 - SPECIAL CLOSURES AND RESTRICTIONS**

#### A. General

The State of Colorado is divided into two migratory waterfowl flyways consisting of the Pacific Flyway which includes all lands west of the Continental Divide, and the Central Flyway which includes all lands east of the Continental Divide.

1. A person may take in any one day, during the open season prescribed, not to exceed the number of migratory game birds and waterfowl permitted in this chapter. When so taken such birds may be possessed in the numbers specified in this chapter, except that no person on the opening day of the season may possess any migratory game birds or waterfowl in excess of the applicable daily limits and no person may possess any freshly killed migratory game birds or waterfowl during the closed season for such birds.
2. Nothing in this chapter shall be deemed to permit the taking of migratory game birds or waterfowl on any Federal reservation or sanctuary, or any area of the United States set aside under any law, proclamation, or executive order for use as a bird, game, or other wildlife reservation, breeding ground, or refuge, or on any area designated as a closed area under the Migratory Bird Treaty Act except as may be permitted by these regulations.



3. No migratory game bird or waterfowl may be taken at any time, or by any means, from, on or across any highway, road, designated trail, or other right-of-way, whether public or private, within the exterior boundaries of any established national wildlife refuge.
4. Open seasons are established only on such migratory game birds and waterfowl as are herein designated. Exceptions to daily bag and possession limits and to the hours of hunting stated in Federal Migratory Bird regulations shall be as prescribed in this chapter.
5. Descriptions of all closures, specific areas, and areas with special restrictions in this chapter begin with the northern boundary and are described in clockwise rotation, with all roads or designations listed connecting to the next in the progression. The following standard abbreviations are used throughout this chapter:  
Colorado State highways: Colo  
County: Co  
County roads: Co Rd  
Interstate highways: I-  
Road: Rd  
U.S. (Federal) highways: US

Note: Migratory bird hunting closures and special provisions and restrictions for Division properties are found in Chapter 9.

**B. Possession of Live Birds**

Every migratory game bird wounded by hunting and reduced to possession by the hunter shall be immediately killed and become a part of the daily bag limit. No person shall at any time, or by any means, possess or transport live migratory game birds taken under the provisions of this chapter.

**C. Possession of Plumage and Skin of Migratory Birds and Waterfowl.**

1. No permit is necessary to possess and transport for his own use the plumage and skins of lawfully taken migratory game birds and waterfowl.
2. Personal use of feathers or skins - any person for his own use may possess, transport, ship, import, and export without a permit the feathers and skins of lawfully taken migratory game birds.

**D. Commercial Use of Feathers**

Any person may possess, purchase, sell, barter, or transport for the making of fishing flies, bed pillows, and mattresses, and for similar commercial uses the feathers of migratory waterfowl (ducks, geese, and swans) killed by hunting pursuant to these regulations, or seized and condemned by Federal or State game authorities except that:

1. No person shall purchase, sell, barter, or offer to purchase, sell, or barter for millinery or ornamental use the feathers of migratory game birds taken under authority of this chapter, and;
2. No person shall purchase, sell, barter, or offer to purchase, sell or barter mounted specimens of migratory game birds taken under authority of this chapter.

**E. Most Restrictive Federal or State Law Shall Apply -**

Federal and State laws and regulations govern the taking of all migratory birds, in all cases, the most restrictive State or Federal regulation shall apply by species.

**F. Processing, Storage and Tagging Required**

No person shall put or leave any migratory game birds at any place (other than at his personal abode), or in the custody of another person for picking, cleaning, processing, or storage (including temporary storage), or for the purpose of having taxidermy services performed, unless such birds or package or container of such birds has a tag attached, signed by the hunter, stating the hunter's address, the total number and species of birds, the date such birds were killed, and the hunter's hunting license number.

G. Custody of Birds of Another Person

No person shall receive or have in custody any migratory game birds belonging to another person unless such birds are tagged as required in item F.

H. Migratory Bird Preservation Facilities

No preservation facility shall:

1. Receive, possess or have in custody any migratory game birds belonging to another person for purposes of picking, cleaning, freezing, processing, storage or shipment, unless accurate records are maintained showing (1) the number of each species, (2) the date such birds were received, (3) the date such birds were disposed of, and (4) the name and address of the person to whom such birds were delivered, or
2. Destroy any records required to be maintained under this section for a period of one (1) year following the last entry on the record, or
3. Prevent any person authorized to enforce the provisions of this regulation from entering such facilities at all reasonable hours and inspecting the records and the premises where such operations are being carried on.

I. Closures

1. Waterfowl hunting is prohibited within the area bounded on the north by the Colorado-Wyoming state line; on the east and south by I-76, Colo 71, US 36, and I-70; and on the west by the Continental Divide and the Larimer-Jackson county line and in Bent, Crowley, Kiowa, Mesa, Otero, and Prowers counties.
  - a. Within fifty (50) yards on each side of the center line of any public road.
  - b. Within one-hundred-fifty (150) yards of any dwelling including the air space directly above this closure, without first obtaining permission from the owner, occupant or person in charge of the dwelling.
2. Hunting is prohibited as specified in the areas and on the dates listed below:
  - a. Barr Lake State Park, Adams County
    1. Only waterfowl hunting will be allowed and will be restricted to Saturdays and Wednesdays.
2. All hunting requires a reservation. Reservations may be made in accordance with #901.A of these regulations. Hunters with reservations may only hunt the area specified on the reservation. Hunters must follow check-in and check-out procedures as posted.
3. Hunters must check in and check out at the designated check station.
  4. Waterfowl hunting is restricted to designated blinds and the maximum number of hunters per blind is 3.
  5. Blinds that have not been reserved will be available on a first-come, first-serve basis after 5 a.m. on each hunting day. Reserved blinds unoccupied by 7:00 a.m. will be available on a first-come, first-serve basis.
- b. Colorado River, Grand County - Waterfowl hunting is prohibited from Shadow Mountain Dam downstream to Twin Creek after November 13.
- c. Colorado River, Mesa County - Waterfowl hunting is prohibited on the Colorado River and 200 yards on either side of the river from the Grand Avenue Bridge in Grand Junction to the west end of Horsethief Canyon State Wildlife Area during the following time periods: Wednesday through Friday of each week, except Thanksgiving

Day, Christmas Day and New Year's Day. In addition waterfowl hunting is prohibited on the river and 200 yards on either side of the river from Appleton Drain to Hunter Wash (the west end of the Walker SWA).

- d. Dillon Reservoir, Summit County – Waterfowl hunting is prohibited on Labor Day and the Saturday and Sunday immediately preceding Labor Day.
  - e. Highline Lake State Recreation Area, Mesa County –
    - 1. Waterfowl hunting on Highline Lake is prohibited on Saturdays and Sundays.
    - 2. Waterfowl hunting is limited to designated blinds only, with a maximum of four (4) hunters per blind.
    - 3. Hunting on this property is by reservation only. Reservations may be made in accordance with #901.A of these regulations. Hunters with reservations may only hunt the hunt area specified on the reservation. Hunters must follow check-in and check-out procedures as posted at the property.
    - 4. Hunt areas that have not been reserved will be available on a first-come, first-served basis after 5:00 am on each hunting day. Reserved hunt areas unoccupied by 7:00 am will be available on a first-come, first-served basis. However, any hunt area must be yielded at any time upon request of a hunter holding a valid and active reservation for that area.
  - f. James M. Robb Colorado River State Park, Mesa County
    - 1. All hunters must park in designated parking areas only.
    - 2. Waterfowl hunting is limited to designated blinds only, with a maximum of four (4) hunters per blind.
    - 3. Hunting on this property is by reservation only. Reservations may be made in accordance with #901.A of these regulations. Hunters with reservations may only hunt the hunt area specified on the reservation. Hunters must follow check-in and check-out procedures as posted at the property.
    - 4. Hunt areas that have not been reserved will be available on a first-come, first-served basis after 5:00 am on each hunting day. Reserved hunt areas unoccupied by 7:00 am will be available on a first-come, first-served basis. However, any hunt area must be yielded at any time upon request of a hunter holding a valid and active reservation for that area.
  - g. Mack Mesa Reservoir State Recreation Area, Mesa County - Hunting and trapping are prohibited.
  - h. Pueblo County - No person shall discharge a firearm or release an arrow for the purpose of hunting waterfowl within 150 yards of any dwelling, including the airspace directly above this closure, without first obtaining permission from the owner, occupant, or person in charge of the dwelling.
  - i. Prewitt Reservoir, Logan and Washington counties - Waterfowl hunting is prohibited as posted to provide for waterfowl resting as necessary depending on water levels, weather, and presence of birds.
  - j. Sweitzer Lake, Delta County - Waterfowl hunting is permitted on opening day and thereafter on each Saturday, Sunday, Wednesday and legal holiday.
  - k. Turk's Ponds Area, Baca County - The following regulations will be in effect from the beginning of the first split of the waterfowl season through the last day of the waterfowl season in sections 20, 21, 28, 29, 32 and 33 in Township 29 South, Range 44 West, 6th P.M. as posted.
    - 1. All lands in Turk's Pond State Wildlife Area within one quarter (1/4) mile of the ordinary high water line are closed to hunting.
    - 2. No person shall discharge a firearm or release an arrow from, upon or across an area 50 yards on each side of the center line of any public road.
  - l. Vancil Reservoir, Morgan County - Waterfowl hunting is prohibited as posted to provide for waterfowl resting as necessary depending on water levels, weather and presence of birds.
3. Hunting is prohibited in the areas listed below, as posted by the Division. Maps detailing current posting shall be available at Division of Wildlife offices upon request during the period of posting restrictions, and such restrictions shall be posted at all public access

points and at specific locations where restrictions apply in adequate numbers and appropriate size to insure notice to the public. The Division shall use only the following criteria when posting these areas: to allow a resting area for waterfowl or other wildlife; to assure public safety by prohibiting the discharge of firearms (hunting) in close proximity to buildings, residences, structures, or other areas where people may be injured or property damaged; and/or to maintain compliance with provisions imposed by leases, deeds or other legally binding restrictions.

- a. Crawford State Recreation Area, Delta County
    1. Hunting is prohibited as posted.
  - b. Meredith Reservoir, Crowley County
    1. Hunting is prohibited as posted.
  - c. New Windsor Reservoir, Weld County
    1. Hunting is prohibited as posted.
    2. No person shall hunt waterfowl within 400 yards of any occupied dwelling without first obtaining permission from the owner, occupant, or person in charge or within one-quarter (1/4) of a mile of the center line of the following roads: beginning at the junction of Weld County Road 74 and State Highway 257 north to Weld County Road 78; east to Weld County Road 21; south to Weld County Road 74; then west to the beginning at State Highway 257 and that said closure shall include all of the area within the boundary formed by these roads.
    3. No person shall hunt waterfowl within 150 yards of the centerline of the following roads: State Highway 257 between Weld County Road 78 and Weld County Road 74; Weld County Road 74 between State Highway 257 and Weld County Road 21.
  - d. Trinidad State Recreation Area, Las Animas County
    1. Waterfowl hunting is prohibited as posted.
4. Hunting geese is prohibited as specified in the areas listed below:
- a. Empire Reservoir, Weld and Morgan Counties
    1. Hunting of geese is prohibited below the historical and recorded high water line. Hunting is also prohibited on the north side of the reservoir 20 yards above the high water line from a point beginning at the inlet structure, continuing north and east to the easternmost end of the dike structure.
  - b. Fossil Creek Reservoir, Larimer County
    1. Hunting of geese is prohibited as posted.
  - c. Johnson Pond, Sedgwick County
    1. Hunting of geese prohibited in that portion of Sedgwick County bounded on the north by U.S. Highway 138, on the east by U.S. Highway 385, on the south by U.S. Interstate 76, and on the west by Sedgwick County Road 29.
    2. During the special late light goose season (Eastern Colorado Special Control Period) and any conservation order for light geese, light goose hunting is allowed within the Johnson Pond Special Goose Closure.
  - d. Jumbo Reservoir, Red Lion, Logan and Sedgwick Counties
    1. Hunting of geese is prohibited in those portions of Logan and Sedgwick counties bounded on the north by Logan Co Rd 70 and Sedgwick Co Rd 3; on the east by Sedgwick Co Rd 3; on the south by Logan Co Rd 970 and Sedgwick Co Rd 24.8, and on the west by Logan Co Rd 95, except as otherwise provided for the Red Lion State Wildlife Area in Chapter 9 of these regulations.
  - e. Lower Latham Reservoir, Weld County
    1. Hunting is prohibited as posted.
  - f. Riverside Reservoir, Weld County
    1. Hunting of geese is prohibited as posted.
  - g. Grand Lake and Windy Gap Reservoir, Grand County
    1. Hunting of geese is prohibited on these lakes, and in the area within 100 yards of their high-water lines.

#### J. Restrictions

1. Landowners may use dogs to haze geese off of their property in order to prevent or alleviate damage, except from April 1 through July 31, provided that the dog is controlled such that no geese are injured or killed.

#### **#505 – SORA AND VIRGINIA RAIL**

A. Statewide:

1. Dates: September 1 - November 9 annually.
2. Daily Bag Limit: Twenty-five (25) soras or Virginia rails singly or in the aggregate.
3. Possession Limit: Three (3) daily bag limits.

#### **#506 – SANDHILL CRANE**

A. All areas east of the Continental Divide except North Park (Jackson County) and the San Luis Valley.

1. Dates: October 4 - November 30, 2014.
2. Daily Bag Limit: Three (3).
3. Possession Limit: Three (3) daily bag limits.

#### **#507 – WILSON'S SNIPE**

A. Statewide

1. Dates: September 1 – December 16 annually.
2. Daily Bag Limit: Eight (8).
3. Possession Limit: Three (3) daily bag limits.

#### **#508 – MOURNING DOVE AND WHITE-WINGED DOVE**

A. Statewide.

1. Dates: September 1 – November 9 annually.
2. Daily Bag Limit:
  - a. Fifteen (15) mourning doves or white-winged doves singly or in the aggregate.
3. Possession Limit:
  - a. Three (3) daily bag limits.
4. Special Conditions and Restrictions
  - a. While in the field or during transport, all dressed (not fully feathered) doves shall be counted against the daily bag or possession limit for mourning and white-winged doves.

#### **#509 – BAND-TAILED PIGEON**

A. Statewide.

1. Dates: September 1 – 30 annually.
2. Daily Bag Limit: Five (5).
3. Possession Limit: Three (3) daily bag limits.

#### **#510 – CROW**

A. Statewide.

1. Dates: October 1 – January 31 annually.

2. Daily Bag Limit: Unlimited.
3. Possession Limit: Unlimited.
4. Special Conditions and Restrictions - Recorded or electronically amplified calls may be used during this season.

## **#511 – DUCK AND COOT**

- A. Central Flyway Northeast Zone – All areas east of Interstate 25 and north of Interstate 70.
  1. Dates:
    - a. First season: October 11 - December 1, 2014.
    - b. Second season: December 13, 2014 - January 25, 2015.
  2. Daily Bag Limit:
    - a. Ducks: Six (6), excluding mergansers. Of the six (6), no more than five (5) mallards, of which no more than two (2) can be female, two (2) pintail, one (1) canvasback, two (2) redheads, three (3) wood ducks, and three (3) scaup.
    - b. Mergansers: Five (5), of which no more than two (2) may be hooded mergansers.
    - c. Coots: Fifteen (15).
  3. Possession limit: Three (3) daily bag limits.
- B. Central Flyway Southeast Zone – All areas east of Interstate 25 and south of Interstate 70, and all of El Paso, Pueblo, Huerfano and Las Animas Counties.
  1. Dates:
    - a. October 22, 2014 - January 25, 2015.
  2. Daily Bag Limit:
    - a. Ducks: Six (6), excluding mergansers. Of the six (6), no more than five (5) mallards, of which no more than two (2) can be female, two (2) pintail, one (1) canvasback, two (2) redheads, three (3) wood ducks, and three (3) scaup.
    - b. Mergansers: Five (5), of which no more than two (2) may be hooded mergansers.
    - c. Coots: Fifteen (15).
  3. Possession limit: Three (3) daily bag limits.
- C. Central Flyway Mountain/Foothills Zone – All areas west of Interstate 25 and east of the Continental Divide, except El Paso, Pueblo, Huerfano and Las Animas Counties.
  1. Dates:
    - a. First season: October 4 - December 1, 2014.
    - b. Second season: December 20, 2014 - January 25, 2015.
  2. Daily Bag Limit:
    - a. Ducks: Six (6), excluding mergansers. Of the six (6), no more than five (5) mallards, of which no more than two (2) can be female, two (2) pintail, one (1) canvasback, two (2) redheads, three (3) wood ducks, and three (3) scaup.
    - b. Mergansers: Five (5), of which no more than two (2) may be hooded mergansers.
    - c. Coots: Fifteen (15).
  3. Possession limit: Three (3) daily bag limits.
- D. Pacific Flyway – All areas west of the Continental Divide.
  1. Dates:
    - a. First season: September 27 - October 15, 2014
    - b. Second season: November 1, 2014 - January 25, 2015.
  2. Daily Bag Limit:
    - a. Ducks and Mergansers: Seven (7) in the aggregate. Of the 7 (seven), no more than two (2) female mallards, two (2) pintails, one (1) canvasback, two (2) redheads, and three (3) scaup. No scaup may be taken after January 6, 2015.
    - b. Coots: Twenty-five (25).

3. Possession limit:
  - a. Three (3) daily bag limits.

## **#512 – GOOSE**

### **A. North Park – Jackson County**

1. Dates:
  - a. Dark goose:
    1. First season: October 4 - October 22, 2014.
    2. Second season: November 22, 2014 - February 15, 2015.
  - b. Light goose: November 1, 2014 - February 15, 2015.
2. Daily Bag Limit:
  - a. Dark goose: Five (5).
  - b. Light goose: Fifty (50).
3. Possession limit:
  - a. Dark goose: Three (3) daily bag limits.
  - b. Light goose: Unlimited.

### **B. South Park and San Luis Valley - All of Alamosa, Chaffee, Conejos, Costilla, Custer, Fremont, Lake, Park, Rio Grande and Teller counties, and those portions of Saguache, Mineral and Hinsdale counties east of the Continental Divide.**

1. Dates:
  - a. Dark goose:
    1. First season: October 4 - October 22, 2014.
    2. Second season: November 22, 2014 - February 15, 2015.
  - b. Light goose: November 1, 2014 - February 15, 2015.
2. Daily Bag Limit:
  - a. Dark goose: Five (5).b. Light goose: Fifty (50).
3. Possession limit:
  - a. Dark goose: Three (3) daily bag limits.
  - b. Light goose: Unlimited.

### **C. Northern Front Range - All areas in Boulder, Larimer and Weld Counties from the Continental Divide east along the Wyoming border to Highway 85, south on Highway 85 to the Adams County Line, and all lands in Adams, Arapahoe, Broomfield, Clear Creek, Denver, Douglas, Gilpin, and Jefferson Counties.**

1. Dates:
  - a. Dark goose:
    1. First Season: October 4 - October 22, 2014.
    2. Second Season: November 22, 2014 - February 15, 2015.
  - b. Light goose: November 1, 2014 - February 15, 2015.
2. Daily bag limit:
  - a. Dark goose: Five (5).
  - b. Light goose: Fifty (50).
3. Possession limit:
  - a. Dark goose: Three (3) daily bag limits.
  - b. Light goose: Unlimited.

### **D. Balance of Central Flyway - All areas east of the Continental Divide, except North Park, Northern Front Range, South Park and San Luis Valley.**

1. Dates:
  - a. Dark goose: November 22, 2014 - February 15, 2015.
  - b. Light goose: November 1, 2014 - February 15, 2015.

2. Daily Bag Limit:
    - a. Dark goose: Five (5).
    - b. Light goose Fifty (50).
  3. Possession limit:
    - a. Dark goose: Three (3) daily bag limits.
    - b. Light goose: Unlimited.
- E. Pacific Flyway: All areas west of the Continental Divide.
1. Dates:
    - a. First season: September 27 - October 6, 2014.
    - b. Second season: November 1, 2014 - January 25, 2015.
  2. Daily Bag Limit:
    - a. Dark goose: Four (4).
    - b. Light goose: Ten (10).
  3. Possession Limit: Three (3) daily bag limits.

### **ARTICLE III - SPECIAL SEASONS, AREAS, DATES AND LIMITS**

#### **#513 - YOUTH WATERFOWL HUNTING DAYS**

- A. Central Flyway Northeast Zone – All areas east of Interstate 25 and north of Interstate 70.
1. Dates: October 4 - 5, 2014.
  2. Daily bag limit:
    - a. Ducks: Six (6), excluding mergansers. Of the 6 (six), no more than five (5) mallards, of which no more than two (2) can be female, two (2) pintail, one (1) canvasback, two (2) redheads, three (3) wood ducks, and three (3) scaup.
    - b. Mergansers: Five (5), of which no more than two (2) may be hooded mergansers.
    - c. Coots: Fifteen (15).
    - d. Dark Goose: Five (5).
  3. Possession limit: Three (3) daily bag limits.
- B. Central Flyway Southeast Zone – All areas east of Interstate 25 and south of Interstate 70, and all of El Paso, Pueblo, Huerfano and Las Animas Counties.
1. Dates: October 18 - 19, 2014.
  2. Daily bag limit:
    - a. Ducks: Six (6), excluding mergansers. Of the 6 (six), no more than five (5) mallards, of which no more than two (2) can be female, two (2) pintail, one (1) canvasback, two (2) redheads, three (3) wood ducks, and three (3) scaup.
    - b. Mergansers: Five (5), of which no more than two (2) may be hooded mergansers.
    - c. Coots: Fifteen (15).
    - d. Dark Goose: Five (5).
  3. Possession limit: Three (3) daily bag limits.
- C. Central Flyway Mountain/Foothills Zone – All areas west of Interstate 25 and east of the Continental Divide, except El Paso, Pueblo, Huerfano and Las Animas Counties.
1. Dates: September 27 - 28, 2014.
  2. Daily Bag Limit:
    - a. Ducks: Six (6), excluding mergansers. Of the six (6), no more than five (5) mallards, of which no more than two (2) can be female, two (2) pintail, one (1) canvasback, two (2) redheads, three (3) wood ducks, and three (3) scaup.
    - b. Mergansers: Five (5), of which no more than two (2) may be hooded mergansers.
    - c. Coots: Fifteen (15).
    - d. Dark Goose: Five (5).



3. Possession limit: Three (3) daily bag limits.
- D. Pacific Flyway – All areas west of the Continental Divide.
1. Dates: October 18 - 19, 2014.
  2. Daily bag limit:
    - a. Ducks and Mergansers: Seven (7) in the aggregate. Of the 7 (seven), no more than two (2) female mallards, two (2) pintails, one (1) canvasback, two (2) redheads, and three (3) scaup.
    - b. Coots: Twenty-five (25).
    - c. Dark Goose: Four (4).
    - d. Light Goose: Ten (10).
  3. Possession limit:
    - a. Three (3) daily bag limits.
- E. Youth seasons are restricted to hunting by youth 17 years of age and younger accompanied by a mentor. A mentor must be 18 years of age or older and hold a valid hunter education certificate or be born before January 1, 1949, and must accompany the youth while in the act of hunting. Mentors are not authorized to hunt ducks, geese, mergansers, or coots during this season.

#### **#514 – SEPTEMBER TEAL**

- A. Lake and Chaffee counties and all areas east of I-25.
1. Dates: September 13 - 21, 2014.
  2. Daily bag limit: Six (6).
  3. Possession Limit: Three (3) daily bag limits.

#### **#515 – EARLY CANADA GOOSE**

- A. Pacific Flyway - All areas west of the Continental Divide.
1. Dates: September 1 - 9 annually.
  2. Daily bag limit: Four (4).
  3. Possession limit: Three (3) daily bag limits.

### **ARTICLE IV – CONSERVATION ORDER SEASONS, AREAS, DATES AND LIMITS**

#### **#516 – LIGHT GOOSE**

- A. Central Flyway – All areas east of I-25.
1. Dates:
    - a. February 16 - April 30, 2015.
  2. Daily bag limit: Unlimited.
  3. Possession limit: Unlimited.
  4. Special Conditions and Restrictions
    - a. Recorded or electronically amplified calls may be used to take light geese during the conservation order season.
    - b. Hunting of light geese is allowed from one-half (1/2) hour before sunrise to one-half (1/2) hour after sunset.
    - c. A Federal Migratory Bird Hunting and Conservation Stamp is not required to take light geese during the conservation order season.
    - d. Shotguns capable of holding more than three rounds in the magazine and chamber combined may be used to take light geese during the conservation order season.

- e. All other regulations applicable to hunting migratory waterfowl in Colorado apply to taking light geese during the conservation order season.

## **ARTICLE V - DEPREDAATION ORDERS**

### **#517 – CROWS AND MAGPIES**

- A. Crows and magpies may be taken without Federal or State permit at any time of the year or at any time of the day or night when found committing or about to commit depredation upon ornamental or shade trees, agricultural crops, livestock or wildlife, or when concentrated in such numbers and manner as to constitute a health hazard or other nuisance.

## **ARTICLE VI - FALCONRY**

### **#518 – SPECIAL FALCONRY REGULATIONS**

- A. Falconry is a permitted means of taking migratory game birds during regular or extended seasons.
  - 1. Regular Seasons
    - a. General hunting regulations prescribed in this chapter, including seasons and hunting hours, apply to falconry. General season bag and possession limits do not apply to falconry.
    - b. Daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 9 birds, respectively, singly or in the aggregate. The falconry bag limit is not in addition to gun limits.
  - 2. Extended Seasons
    - a. There are no extended seasons.

**John W. Suthers**  
Attorney General

**Cynthia H. Coffman**  
Chief Deputy Attorney General

**Daniel D. Domenico**  
Solicitor General



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**State of Colorado**  
**Department of Law**  
**Office of the Attorney General**

Tracking number: 2014-00630

**Opinion of the Attorney General rendered in connection with the rules adopted by the**  
**Colorado Parks and Wildlife (406 Series, Wildlife)**

**on 08/08/2014**

**2 CCR 406-5**

**CHAPTER W-5 - MIGRATORY BIRDS**

The above-referenced rules were submitted to this office on 08/16/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

August 22, 2014 16:29:03

A handwritten signature in black ink, appearing to read "DD", is written over a light blue rectangular background.

**John W. Suthers**  
Attorney General  
by Daniel D. Domenico  
Solicitor General

## **Permanent Rules Adopted**

### **Department**

Department of Regulatory Agencies

### **Agency**

Division of Real Estate

### **CCR number**

4 CCR 725-1

### **Rule title**

4 CCR 725-1 RULES REGARDING REAL ESTATE BROKERS 1 - eff 09/30/2014

### **Effective date**

09/30/2014

**[THIS PAGE NOT FOR PUBLICATION IN THE CODE OF COLORADO REGULATIONS]**

**DEPARTMENT OF REGULATORY AGENCIES  
DIVISION OF REAL ESTATE  
REAL ESTATE COMMISSION  
4CCR 725-1**

**D-14. ERRORS AND OMISSIONS (E&O) INSURANCE**

Pursuant to and in compliance with Title 12, Article 61 and Title 24, Article 4, C.R.S, as amended, notice of proposed rulemaking is hereby given, including notice to the Attorney General of the State of Colorado and to all persons who have requested to be advised of the intention of the Colorado Real Estate Commission (the "Commission") to promulgate rules, or to amend, repeal or repeal and re-enact the present rules of the Commission.

**STATEMENT OF BASIS**

The statutory basis for the rules titled Rules of the Colorado Real Estate Commission is Part 1 of Title 12, Article 61, Colorado Revised Statutes, as amended.

**STATEMENT OF PURPOSE**

The purpose of this rule is to effectuate the legislative directive to promulgate necessary and appropriate rules in conformity with the state statutes of the real estate practice act.

**SPECIFIC PURPOSE OF THIS RULEMAKING**

The specific purpose of this rule is to amend or repeal existing rules with respect to requirements for license renewal, transfer, inactivation and errors and omissions insurance for real estate brokers.

**Proposed New, Amended and Repealed Rules**

[Deleted material shown ~~struck through~~, new material shown ALL CAPS. Rules, or portions of rules, which are unaffected are reproduced. Readers are advised to obtain a copy of the complete rules of the Board at [www.dora.state.co.us/real-estate/](http://www.dora.state.co.us/real-estate/).

**D-14. Errors and omissions (E&O) insurance (See 12-61-103.6, C.R.S.)**

*Every active real estate licensee shall have in effect a policy of errors and omissions insurance to cover all acts requiring a license. In addition, all active licensed real estate companies that employ licensees in addition to the responsible broker must also have in effect a policy of errors and omissions insurance to cover all acts requiring a license.*

- (a) The Commission shall enter into a contract with a qualified insurance carrier to make available to all licensees and license applicants a group policy of insurance under the following terms and conditions (hereafter referred to as the "Commission Insurance Policy"):
  - (1) The insurance carrier is licensed and authorized by the Colorado Division of Insurance to write policies of errors and omissions insurance in this state.
  - (2) The insurance carrier maintains an A.M. Best rating of "A-" or better.
  - (3) The insurance carrier will collect premiums, maintain records and report names of those insured and a record of claims to the Commission on a timely basis and at no expense to the state.
  - (4) The insurance carrier has been selected through a competitive bidding process.
  - (5) The contract and policy are in conformance with this rule and all relevant Colorado statutory requirements.
- (b) The Commission Insurance Policy shall provide, at a minimum, the following terms of coverage:
  - (1) Coverage for all acts for which a real estate license is required, except those illegal, fraudulent or other acts which are normally excluded from such coverage.
  - (2) That the coverage cannot be canceled by the insurance carrier except for nonpayment of the premium or in the event a licensee becomes inactive or is revoked or an applicant is denied a license.
  - (3) Pro-ration of premiums for coverage which is purchased during the course of a calendar year but with no provision for refunds of unused premiums.
  - (4) Not less than \$100,000 coverage for each licensed individual and entity per covered claim regardless of the number of licensees or entities to which a settlement or claim may apply, not including costs of investigation and defense.
  - (5) An annual aggregate limit of not less than \$300,000 per licensed individual or entity, not including costs of investigation and defense.
  - (6) Coverage for investigation and defense shall be provided in addition to policy coverage limits.
  - (7) A deductible amount for each occurrence of not more than \$1,000 for claims and no deductible for legal expenses and defense.
  - (8) The obligation of the insurance carrier to defend all covered claims and the ability of the insured licensee to select counsel of choice subject to the written permission of the carrier, which shall not be unreasonably withheld.
  - (9) Coverage of a licensee's use of lock boxes, which coverage shall not be less than \$25,000 per occurrence.
  - (10) The ability of a licensee, upon payment of an additional premium, to obtain higher or excess coverage or to purchase additional coverage from the state carrier as may be determined by the carrier.
  - (11) That coverage is individual and license specific and will cover the licensee regardless of changes in employing broker.
  - (12) The ability of a licensee, upon payment of an additional premium to obtain an extended reporting period of not less than 365 days.

- (13) A conformity endorsement allowing a Colorado resident licensee to meet the errors and omissions insurance requirement for an active license in another group mandated state without the need to purchase separate coverage in that state.
- (14) Prior acts coverage shall be offered to licensees with continuous past coverage.
- (c) Licensees or applicants may obtain errors and omissions coverage independent of the Commission Insurance Policy from any insurance carrier subject to the following terms and conditions:
- (1) For both individual and entity/group policies, the insurance carrier must be licensed and authorized by the Colorado Division of Insurance to write policies of errors and omissions insurance in this state and must be in conformance with all Colorado statutes.
  - (2) The insurance provider maintains an A.M. Best rating of "A-" or better.
  - (3) Individual policies must, at a minimum, comply with the following conditions and the insurance carrier must certify compliance in an affidavit issued to the insured licensee or applicant in a form specified by the Commission. Insurance carrier agrees to immediately notify the Commission of any cancellation or lapse in coverage. Independent individual coverage must provide, at a minimum, the following:
    - (i) The contract and policy are in conformance with all relevant Colorado statutory requirements.
    - (ii) Coverage includes all acts for which a real estate license is required, except those illegal, fraudulent or other acts that are normally excluded from such coverage.
    - (iii) Coverage cannot be canceled by the insurance carrier except for nonpayment of the premium. Cancellation notice must be provided in a manner that complies with 10-4-109.7(1), C.R.S.
    - (iv) Coverage is for not less than \$100,000 for each licensed individual and entity per covered claim, with an annual aggregate limit of not less than \$300,000 per licensed individual and entity, not including costs of investigation and defense. Coverage for investigation and defense shall be provided in addition to policy coverage limits.
    - (v) A deductible amount for each occurrence of not more than \$1,000 for claims and the provider shall look to the insured for payment of any deductible.
    - (vi) Payment of defense costs by the provider shall be on a first dollar basis. That is, the insured is not required to pay anything towards the cost of defense of any claim or complaint.
    - (vii) The ability of a licensee, upon payment of an additional premium to obtain an extended reporting period of not less than 365 days within sixty (60) days of the initial coverage ending.
    - (viii) That the provider of the independent policy has executed an affidavit in a form or manner specified by the commission attesting that the independent policy is in force and, at a minimum, complies with all relevant conditions set forth herein and that the provider will immediately notify the Commission in writing of any cancellation or lapse in coverage of any independent policy.
    - (ix) Coverage of a licensee's use of lock boxes, which coverage shall not be less than \$25,000 per occurrence.
      - x) Prior acts coverage shall be offered to licensees with continuous past coverage.
  - 4) For firms and sole-proprietor brokerages with independently carried firm coverage, section (3) will apply except sections (3)(iv), (3)(v) and (3)(x) shall be replaced with the following:
    - i) The per claim limit shall be not less than \$1,000,000.

ii) The aggregate limit shall be not less than \$1,000,000.

iii) The maximum deductible amount for each occurrence shall not exceed \$10,000 and the provider shall look to the insured for payment of any deductible.

- (d) Applicants for licensure, activation, renewal and reinstatement shall certify compliance with this rule and 12-61-103.6, C.R.S., on forms or in a manner prescribed by the Commission. Any active licensee who so certifies and fails to obtain errors and omissions coverage or to provide proof of continuous coverage, either through the group carrier or directly to the Commission, shall be placed on inactive status:
- (1) Immediately, if certification of current insurance coverage is not provided to the Commission; or,
  - (2) Immediately upon the expiration of any current insurance when certification of continued coverage is not provided.



**John W. Suthers**  
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**State of Colorado**  
**Department of Law**  
**Office of the Attorney General**

Tracking number: 2014-00611

**Opinion of the Attorney General rendered in connection with the rules adopted by the**  
**Division of Real Estate**

**on 08/05/2014**

**4 CCR 725-1**

**RULES REGARDING REAL ESTATE BROKERS**

The above-referenced rules were submitted to this office on 08/06/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

**John W. Suthers**  
Attorney General  
by Daniel D. Domenico  
Solicitor General

August 22, 2014 16:29:32

## **Permanent Rules Adopted**

### **Department**

Department of Public Health and Environment

### **Agency**

Water Quality Control Commission (1002 Series)

### **CCR number**

5 CCR 1002-33

### **Rule title**

5 CCR 1002-33 REGULATION NO. 33 - CLASSIFICATIONS AND NUMERIC  
STANDARDS FOR UPPER COLORADO RIVER BASIN AND NORTH PLATTE RIVER  
(PLANNING REGION 12) 1 - eff 12/31/2014

### **Effective date**

12/31/2014

**COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**  
**WATER QUALITY CONTROL COMMISSION**

**5 CCR 1002-33**

**CLASSIFICATIONS AND NUMERIC STANDARDS  
FOR  
UPPER COLORADO RIVER BASIN AND  
NORTH PLATTE RIVER (PLANNING REGION 12)**

**REGULATION NO. 33**

**33.1 AUTHORITY**

These regulations are promulgated pursuant to section 25-8-101 et seq. C.R.S., as amended, and in particular, 25-8-203 and 25-8-204.

**33.2 PURPOSE**

These regulations establish classifications and numeric standards for the Colorado River, the Yampa River, and the North Platte River, including all tributaries and standing bodies of water as indicated in section 33.6. The classifications identify the actual beneficial uses of the water. The numeric standards are assigned to determine the allowable concentrations of various parameters. Discharge permits will be issued by the Water Quality Control Division to comply with basic, narrative, and numeric standards and control regulations so that all discharges to waters of the state protect the classified uses. (See section 31.14). It is intended that these and all other stream classifications and numeric standards be used in conjunction with and be an integral part of Regulation No. 31 Basic Standards and Methodologies for Surface Water.

**33.3 INTRODUCTION**

These regulations and tables present the classifications and numeric standards assigned to stream segments listed in the attached tables (See section 33.6). As additional stream segments are classified and numeric standards for designated parameters are assigned for this drainage system, they will be added to or replace the numeric standards in the tables in section 33.6. Any additions or revisions of classifications or numeric standards can be accomplished only after public hearing by the Commission and proper consideration of evidence and testimony as specified by the statute and the Basic Standards and Methodologies for Surface Water.

**33.4 DEFINITIONS**

See the Colorado Water Quality Control Act and the codified water quality regulations for definitions.

**33.5 BASIC STANDARDS**

**(1) TEMPERATURE**

All waters of Region 12 are subject to the following standard for temperature. (Discharges regulated by permits, which are within the permit limitations, shall not be subject to enforcement proceedings under this standard). Temperature shall maintain a normal pattern of diurnal and seasonal fluctuations with no abrupt changes and shall have no increase in temperature of a magnitude, rate, and duration deemed deleterious to the resident aquatic life. This standard shall

not be interpreted or applied in a manner inconsistent with section 25-8-104, C.R.S.

(2) QUALIFIERS

See Basic Standards and Methodologies for Surface Water for a listing of organic standards at 31.11 and metal standards found at 31.16 Table III. The column in the tables headed "Water Fish" are presumptively applied to all Aquatic Life class 1 streams and are applied to Aquatic Life class 2 streams on a case-by-case basis as shown in the tables in 33.6. The column in the tables at 31.11 headed "Fish Ingestion" is presumptively applied to all Aquatic Life class 1 streams which do not have a water supply classification, and are applied to Aquatic Life class 2 streams which do not have a water supply classification, on a case-by-case basis as shown in Tables 33.6.

(3) URANIUM

- (a) All waters of the Upper Colorado River Basin, are subject to the following basic standard for uranium, unless otherwise specified by a water quality standard applicable to a particular segment. However, discharges of uranium regulated by permits which are within these permit limitations shall not be a basis for enforcement proceedings under this basic standard.
- (b) Uranium level in surface waters shall be maintained at the lowest practicable level.
- (c) In no case shall uranium levels in waters assigned a water supply classification be increased by any cause attributable to municipal, industrial, or agricultural discharges so as to exceed 16.8-30 ug/l or naturally-occurring concentrations (as determined by the State of Colorado), whichever is greater.
  - (i) The first number in the 16.8-30 ug/l range is a strictly health-based value, based on the Commission's established methodology for human health-based standards. The second number in the range is a maximum contaminant level, established under the federal Safe Drinking Water Act that has been determined to be an acceptable level of this chemical in public water supplies, taking treatability and laboratory detection limits into account. Control requirements, such as discharge permit effluent limitations, shall be established using the first number in the range as the ambient water quality target, provided that no effluent limitation shall require an "end-of-pipe" discharge level more restrictive than the second number in the range. Water bodies will be considered in attainment of this standard, and not included on the Section 303(d) List, so long as the existing ambient quality does not exceed the second number in the range.

(4) NUTRIENTS

Prior to May 31, 2022, interim nutrient values will be considered for adoption only in the limited circumstances defined at 31.17(e). These circumstances include headwaters, Direct Use Water Supply (DUWS) Lakes and Reservoirs, and other special circumstances determined by the Commission. Additionally, prior to May 31, 2017, only total phosphorus and chlorophyll a will be considered for adoption. After May 31, 2017, total nitrogen will be considered for adoption per the circumstances outlined in 31.17(e).

Prior to May 31, 2022, nutrient criteria will be adopted for headwaters on a segment by segment basis for the Upper Colorado and North Platte River Basins. Moreover, pursuant to 31.17(e) nutrient standards will only be adopted for waters upstream of all permitted domestic wastewater treatment facilities discharging prior to May 31, 2012 or with preliminary effluent limits requested prior to May 31, 2012, and any non-domestic facilities subject to Regulation 85 effluent limits and discharging prior to May 31, 2012. The following is a list of all permitted domestic wastewater

treatment facilities discharging prior to May 31, 2012 or with preliminary effluent limits requested prior to May 31, 2012, and any non-domestic facilities subject to Regulation 85 effluent limits and discharging prior to May 31, 2012 in the Upper Colorado and North Platte River Basins:

Segment	Permittee	Facility name	Permit No.
COUCUC03	Colorado Dept of Transportation	Grizzly Creek Res Area WWTF	COG588067
COUCUC03	Rock Gardens MHP	Rock Gardens MHP & Campground	COG588083
COUCUC03	Colorado Dept of Transportation	Hanging Lake Res Area WWTF	COG588076
COUCUC03	Colorado Dept of Transportation	Bair Ranch Rest Area	COG588075
COUCUC03	Hermes Group	Two Rivers Village Metro Dist WWTF	COG588070
COUCUC03	Roundup River Ranch	Roundup River Ranch WWTF	COG588116
COUCUC03	Hot Sulphur Springs Town of	Hot Sulphur Springs WWTF	COG588084
COUCUC03	Allegient Management	Ouray Ranch Homeowners Assn WWTF	COG588041
COUCUC06a	C Lazy U Ranch Holdings LLC % Triton Investment Co	C Lazy U Ranch, INC.	COG588072
COUCUC06b	Three Lakes Water and Sanitation District	Willow Creek Lagoons	CO0037681
COUCUC07b	Kremmling Sanitation District	Kremmling Sanitation Dist WWTF	CO0048437
COUCUC10a	Winter Park Water and Sanitation District	Winter Park WSD WWTF	CO0026051
COUCUC10a	Young Life Campaign Inc	Crooked Creek Ranch	CO0045411
COUCUC10a	Colorado Mountain Resort Investors LLC	Devil's Thumb Ranch	CO0046566
COUCUC10a	Tabernash Meadows WSD	Tabernash Meadows WSD WWTF	CO0045501
COUCUC10c	Fraser Town of	Upper Fraser Valley TP	CO0040142
COUCUC10c	Granby Sanitation District	Granby Sanitation District	CO0020699
COUCBL02a	Upper Blue Sanitation Dist	Iowa Hill Water Reclamation	CO0045420
COUCBL08	Dundee Realty USA LLC	Arapahoe Basin Ski Area	CO0023876
COUCBL13	Copper Mountain Consolidated Metro Dist	Copper Mtn Cons Metro District	CO0021598
COUCBL17	Silverthorne/Dillon Joint Sewer Authority	Blue River WWTF	CO0020826
COUCBL22	Frisco Sanitation District	Frisco Sanitation District WWTF	CO0020451
COUCBL22	Snake River WWTF	Summit County Snake River WWTP	CO0029955
COUCBL22	Upper Blue Sanitation District	Farmers Korner WWTF	CO0021539
COUCEA02	Red Cliff Town of	Red Cliff Town of WWTP	CO0021385
COUCEA08	Eagle River WSD	Vail WWTF	CO0021369
COUCEA09a	Eagle River Water & Sanitation Dist	Avon WWTP	CO0024431
COUCEA09a	Eagle River Water & San Dist	Edwards WWTF	CO0037311
COUCEA09b	Eagle Town of	Eagle Town of WWTP	CO0048241
COUCEA09b	Gypsum Town of	Gypsum Town of WWTF	CO0048830
COUCRF03a	Aspen Consolidated Sanitation District	Aspen Consolidated San District	CO0026387
COUCRF03a	Woody Creek Mobile HOA	Woody Creek Mobile Home Park	COG588103
COUCRF03a	Aspen Village Inc c/o Independence Environmental Services	Aspen Village, INC.	COG588085
COUCRF03a	Riversbend HOA	Riversbend Apartments	COG588066
COUCRF03a	Independence Environmental Services	Lazy Glen Homeowners Assoc.	COG588049
COUCRF03a	Basalt SD	Basalt Sanitation District	COG588063

Segment	Permittee	Facility name	Permit No.
COUCRF03a	Ranch at Roaring Fork c/o Independence Environmental Services	Ranch at Roaring Fork HOA	COG588051
COUCRF03a	Carbondale Town of	Carbondale Town of	COG588050
COUCRF03a	Roaring Fork Water and San District	Roaring Fork WSD WWTF	CO0044750
COUCRF03a	Spring Valley SD	Spring Valley SD WWTF	CO0046124
COUCRF03a	Oak Meadows Service Company	Oak Meadows WWTF	CO0045802
COUCRF03c	Sunlight Inc	Sunlight, INC.	CO0038598
COUCRF03c	Mid Valley Metro District	Mid Valley Metro Dist WWTF	COG588105
COUCRF03c	Blue Creek Ranch LLC	Blue Creek Ranch	COG588074
COUCRF03c	H Lazy F LLC	H Lazy F MHP WWTF	COG588035
COUCRF03c	El Rocko Mobile Home Park	El Rocko MHP	COG588029
COUCRF04	Snowmass WSD	Snowmass WSD	CO0023086
COUCRF08	Sopris Engineering LLC	Redstone Castle WWTF	COG588115
COUCRF08	Redstone WSD	Redstone WSD WWTF	CO0046370
COUCNP05b	Walden Town of	Walden Town of WWTF	CO0020788
COUCYA02a	Yampa Town of	Yampa WWTF	CO0030635
COUCYA02a	Routt County	Milner Community WWTF	CO0047449
COUCYA02c	Hayden Town of	Hayden Town WWTF	CO0040959
COUCYA02c	Steamboat Springs City of	Steamboat Springs, City of	CO0020834
COUCYA03	Whiteman School	Whiteman School	CO0031062
COUCYA04	Routt County Phippsburg/Dept of Envir Hlth	Routt CO for Phippsburg Comm WWTF	COG589026
COUCYA07	Oak Creek Town of	Oak Creek, Town of	CO0041106
COUCYA022	Morrison Creek Metropolitan Water and Sanitation District	Morrison Creek Metro WWTF	CO0022969
COUCYA022	Steamboat Lake Water and Sanitation Dist	Steamboat Lake Water & Sanitation Dist WWTF	CO0035556

Prior to May 31, 2022:

- For segments located entirely above these facilities, nutrient standards apply to the entire segment.
- For segments with portions downstream of these facilities, *nutrient standards only apply above these facilities*. A footnote “C” was added to the total phosphorus and chlorophyll a standards in these segments. The footnote references the table of qualified facilities at 33.5(4).
- For segments located entirely below these facilities, nutrient standards do not apply.

A footnote “B” was added to the total phosphorus and chlorophyll a standards in lakes segments as nutrients standards apply only to lakes and reservoirs larger than 25 acres surface area.

### 33.6 TABLES

#### (1) Introduction

The numeric standards for various parameters in the attached tables were assigned by the Commission after a careful analysis of the data presented on actual stream conditions and on

actual and potential water uses.

Numeric standards are not assigned for all parameters listed in the tables attached to 31.16. If additional numeric standards are found to be needed during future periodic reviews, they can be assigned by following the proper hearing procedures.

(2) Abbreviations:

(a) The following abbreviations are used in the attached tables:

ac	=	acute (1-day)
Ag	=	silver
Al	=	aluminum
As	=	arsenic
B	=	boron
Ba	=	barium
Be	=	beryllium
°C	=	degrees celsius
Cd	=	cadmium
ch	=	chronic (30-day)
Chla	=	Chlorophyll a
Cl	=	chloride
Cl <sub>2</sub>	=	residual chlorine
CL	=	cold lake temperature tier
CLL	=	cold large lake temperature tier
CN	=	free cyanide
CrIII	=	trivalent chromium
CrVI	=	hexavalent chromium
CS-I	=	cold stream temperature tier one
CS-II	=	cold stream temperature tier two
Cu	=	copper
dis	=	dissolved
DM	=	daily maximum
DUWS	=	direct use water supply
D.O.	=	dissolved oxygen
F	=	fluoride
Fe	=	iron
Hg	=	mercury
mg/l	=	milligrams per liter
ml	=	milliliters
Mn	=	manganese
Mo	=	molybdenum
MWAT	=	maximum weekly average temperature
NH <sub>3</sub>	=	un-ionized ammonia as N(nitrogen)
Ni	=	nickel
NO <sub>2</sub>	=	nitrite as N (nitrogen)
NO <sub>3</sub>	=	nitrate as N (nitrogen)
OW	=	outstanding waters
P	=	phosphorus
Pb	=	lead
S	=	sulfide as undissociated H <sub>2</sub> S (hydrogen sulfide)
Sb	=	antimony
sc	=	sculpin
Se	=	selenium
SO <sub>4</sub>	=	sulfate
sp	=	spawning

T	=	temperature
TI	=	thallium
Tot	=	total
tr	=	trout
Trec	=	total recoverable
TVS	=	table value standard
U	=	uranium
ug/l	=	micrograms per liter
UP	=	use-protected
WAT	=	weekly average temperature
WL	=	warm lake temperature tier
WS	=	water supply
WS-I	=	warm stream temperature tier one
WS-II	=	warm stream temperature tier two
WS-III	=	warm stream temperature tier three
WS-IV	=	warm stream temperature tier four
Zn	=	zinc

(b) In addition, the following abbreviations were used:

Fe(ch)	=	WS(dis)
Mn(ch)	=	WS(dis)
SO <sub>4</sub>	=	WS

These abbreviations mean: For all surface waters with an actual Water Supply use, the less restrictive of the following two options shall apply as numerical standards, as specified in the Basic Standards and Methodologies at 31.16 Table II and III:

(i) existing quality as of January 1, 2000; or

(ii)	Iron	=	300 µg/l (dissolved)
	Manganese	=	50 µg/l (dissolved)
	SO <sub>4</sub>	=	250 mg/l

For all surface waters with a “water supply” classification that are not in actual use as a water supply, no water supply standards are applied for iron, manganese or sulfate, unless the Commission determines as the result of a site-specific rulemaking hearing that such standards are appropriate.

(c) As used in the Temporary Modifications and Qualifiers column of the tables in 33.6(5), the term “type A” refers to a Temporary Modification adopted pursuant to subsection 31.7(3)(a)(ii)(A) of the Basic Standards and Methodologies for Surface Water (i.e., “there is significant uncertainty regarding the water quality standard necessary to protect current and/or future use”). As used in the Temporary Modifications and Qualifiers column of the tables in 33.6(5), the term “type B” refers to a Temporary Modification adopted pursuant to subsection 31.7(3)(a)(ii)(B) of the Basic Standards and Methodologies for Surface Water (i.e., “there is significant uncertainty regarding the extent to which existing quality is the result of natural or irreversible human-induced conditions”).

(d) Temporary Modification for Water + Fish Chronic Arsenic Standard

(i) The temporary modification for chronic arsenic standards applied to segments with an arsenic standard of 0.02 ug/l that has been set to protect the Water+Fish qualifier is listed in the temporary modification and qualifiers column as As(ch)=hybrid.



- (ii) For discharges existing on or before 6/1/2013, the temporary modification is: As(ch)=current condition, expiring on 12/31/2021.
- (iii) For new or increased discharges commencing on or after 6/1/2013, the temporary modification is: As(ch)=0.02-3.0 ug/l (Trec), expiring on 12/31/2021.
  - (a) The first number in the range is the health-based water quality standard previously adopted by the Commission for the segment.
  - (b) The second number in the range is a technology based value established by the Commission for the purpose of this temporary modification.
  - (c) Control requirements, such as discharge permit effluent limitations, shall be established using the first number in the range as the ambient water quality target, provided that no effluent limitation shall require an "end-of-pipe" discharge level more restrictive than the second number in the range.

(3) Table Value Standards

In certain instances in the attached tables, the designation "TVS" is used to indicate that for a particular parameter a "table value standard" has been adopted. This designation refers to numerical criteria set forth in the Basic Standards and Methodologies for Surface Water. The criteria for which the TVS are applicable are on the following table.

**TABLE VALUE STANDARDS**  
(Concentrations in ug/l unless noted)

PARAMETER <sup>(1)</sup>	TABLE VALUE STANDARDS <sup>(2)(3)</sup>
Aluminum (Trec)	<p>Acute = <math>e^{(1.3695[\ln(\text{hardness})]+1.8308)}</math>  pH equal to or greater than 7.0  Chronic=<math>e^{(1.3695[\ln(\text{hardness})]-0.1158)}</math>  pH less than 7.0  Chronic= <math>e^{(1.3695[\ln(\text{hardness})]-0.1158)}</math> or 87, whichever is more stringent</p>
Ammonia <sup>(4)</sup>	<p>Cold Water = (mg/l as N)Total</p> $acute = \frac{0.275}{1 + 10^{7.204 - pH}} + \frac{39.0}{1 + 10^{pH - 7.204}}$ $chronic = \left[ \frac{0.0577}{1 + 10^{7.688 - pH}} + \frac{2.487}{1 + 10^{pH - 7.688}} \right] * MIN(2.85, 1.45 * 10^{0.028(25 - T)})$
	<p>Warm Water = (mg/l as N)Total</p> $acute = \frac{0.411}{1 + 10^{7.204 - pH}} + \frac{58.4}{1 + 10^{pH - 7.204}}$
	$chronic (Apr 1 - Aug 31) = \left[ \frac{0.0577}{1 + 10^{7.688 - pH}} + \frac{2.487}{1 + 10^{pH - 7.688}} \right] * MIN(2.85, 1.45 * 10^{0.028(25 - T)})$ $chronic (Sep 1 - Mar 31) = \left[ \frac{0.0577}{1 + 10^{7.688 - pH}} + \frac{2.487}{1 + 10^{pH - 7.688}} \right] * 1.45 * 10^{0.028 * (25 - MAX(T, 7))}$
Cadmium	<p>Acute = <math>(1.136672 - [\ln(\text{hardness}) \times (0.041838)]) \times e^{0.9151[\ln(\text{hardness})] - 3.1485}</math>  Acute(Trout) = <math>(1.136672 - [\ln(\text{hardness}) \times (0.041838)]) \times e^{0.9151[\ln(\text{hardness})] - 3.6236}</math></p>

	Chronic = $(1.101672 - [\ln(\text{hardness}) \times (0.041838)]) \times e^{0.7998[\ln(\text{hardness})] - 4.4451}$					
Chromium III <sup>(5)</sup>	Acute= $e^{(0.819[\ln(\text{hardness})] + 2.5736)}$ Chronic= $e^{(0.819[\ln(\text{hardness})] + 0.5340)}$					
Chromium VI <sup>(5)</sup>	Acute = 16 Chronic = 11					
Copper	Acute= $e^{(0.9422[\ln(\text{hardness})] - 1.7408)}$ Chronic= $e^{(0.8545[\ln(\text{hardness})] - 1.7428)}$					
Lead	Acute= $(1.46203 - [(\ln \text{hardness}) * (0.145712)]) * e^{(1.273[\ln(\text{hardness})] - 1.46)}$ Chronic= $(1.46203 - [(\ln \text{hardness}) * (0.145712)]) * e^{(1.273[\ln(\text{hardness})] - 4.705)}$					
Manganese	Acute= $e^{(0.3331[\ln(\text{hardness})] + 6.4676)}$ Chronic= $e^{(0.3331[\ln(\text{hardness})] + 5.8743)}$					
Nickel	Acute= $e^{(0.846[\ln(\text{hardness})] + 2.253)}$ Chronic= $e^{(0.846[\ln(\text{hardness})] + 0.0554)}$					
Selenium <sup>(6)</sup>	Acute = 18.4 Chronic = 4.6					
Silver	Acute= $1/2e^{(1.72[\ln(\text{hardness})] - 6.52)}$ Chronic = $e^{(1.72[\ln(\text{hardness})] - 9.06)}$ Chronic(Trout) = $e^{(1.72[\ln(\text{hardness})] - 10.51)}$					
Temperature	TEMPERATURE TIER	TIER CODE	SPECIES EXPECTED TO BE PRESENT	APPLICABLE MONTHS	TEMPERATURE STANDARD (°C)	
					(MWAT)	(DM)
	Cold Stream Tier I	CS-I	brook trout, cutthroat trout	June – Sept.	17.0	21.7
				Oct. – May	9.0	13.0
	Cold Stream Tier II	CS-II	all other cold-water species	April – Oct.	18.3	23.9
				Nov. – March	9.0	13.0
	Cold Lake	CL	brook trout, brown trout, cutthroat trout, lake trout, rainbow trout, Arctic grayling, sockeye salmon	April – Dec.	17.0	21.2
				Jan. – March	9.0	13.0
	Cold Large Lake (>100)	CLL	brown trout, lake trout, rainbow trout	April – Dec.	18.3	23.8
				Jan. – March	9.0	13.0
	Warm Stream Tier I	WS-I	common shiner, Johnny darter, orangethroat darter	March – Nov.	24.2	29.0
				Dec. – Feb.	12.1	14.5
	Warm Stream Tier II	WS-II	brook stickleback, central stoneroller, creek chub, longnose dace, Northern redbelly dace, finescale dace, razorback sucker, white sucker	March – Nov.	27.5	28.6
				Dec. – Feb.	13.8	14.3
	Warm Stream Tier III	WS-III	all other warm-water species	March – Nov.	28.7	31.8
				Dec. – Feb.	14.3	15.9

	Warm Lakes	WL	yellow perch, walleye, pumpkinseed, smallmouth bass, striped bass, white bass, largemouth bass, bluegill, spottail shiner, Northern pike, tiger muskellunge, black crappie, common carp, gizzard shad, sauger, white crappie, wiper.	April – Dec.	26.3	29.5
				Jan. – March	13.2	14.8
Uranium	$\text{Acute} = e^{(1.1021[\ln(\text{hardness})] + 2.7088)}$ $\text{Chronic} = e^{(1.1021[\ln(\text{hardness})] + 2.2382)}$					
Zinc	$\text{Acute} = 0.978 * e^{(0.9094[\ln(\text{hardness})] + 0.9095)}$ $\text{Chronic} = 0.986 * e^{(0.9094[\ln(\text{hardness})] + 0.6235)}$ <p>if hardness less than 102 mg/l CaCO<sub>3</sub></p> $\text{Chronic (sculpin)} = e^{(2.140[\ln(\text{hardness})] - 5.084)}$					

#### TABLE VALUE STANDARDS - FOOTNOTES

- (1) *Metals are stated as dissolved unless otherwise specified.*
  - (2) *Hardness values to be used in equations are in mg/l as calcium carbonate and shall be no greater than 400 mg/L, except for aluminum for which hardness shall be no greater than 220 mg/L. The hardness values used in calculating the appropriate metal standard should be based on the lower 95 percent confidence limit of the mean hardness value at the periodic low flow criteria as determined from a regression analysis of site-specific data. Where insufficient site-specific data exists to define the mean hardness value at the periodic low flow criteria, representative regional data shall be used to perform the regression analysis. Where a regression analysis is not appropriate, a site-specific method should be used. In calculating a hardness value, regression analyses should not be extrapolated past the point that data exist.*
  - (3) *Both acute and chronic numbers adopted as stream standards are levels not to be exceeded more than once every three years on the average.*
  - (4) *For acute conditions the default assumption is that salmonids could be present in cold water segments and should be protected, and that salmonids do not need to be protected in warm water segments. For chronic conditions, the default assumptions are that early life stages could be present all year in cold water segments and should be protected. In warm water segments the default assumption is that early life stages are present and should be protected only from April 1 through August 31. These assumptions can be modified by the Commission on a site-specific basis where appropriate evidence is submitted.*
  - (5) *Unless the stability of the chromium valence state in receiving waters can be clearly demonstrated, the standard for chromium should be in terms of chromium VI. In no case can the sum of the instream levels of Hexavalent and Trivalent Chromium exceed the water supply standard of 50 ug/l total chromium in those waters classified for domestic water use.*
  - (6) *Selenium is a bioaccumulative metal and subject to a range of toxicity values depending upon numerous site-specific variables.*
- (4) Assessment Criteria
- The following criteria shall be used when assessing whether a specified waterbody is in attainment of the specified standard.
- (a) Yampa River Segment 13d, Dry Creek: Iron Assessment Thresholds and Locations

Mar-Apr, Fe(ch) = 3040(Trec), snowmelt season median values

May-Feb, Fe(ch) = 1110(Trec), no-snowmelt season median values

Assessment locations:

- Seneca II-W Stream Site 7 on Hubbertson Gulch (WSH7): located in the middle reaches of Hubbertson Gulch
- Seneca II-W Flume Site 1 on Hubbertson Gulch (WSHF1): located on Hubbertson Gulch just upstream of its confluence with Dry Creek
- Seneca II-W Stream Site 5 on Dry Creek (WSD5): located in the middle reaches of Dry Creek

(b) Yampa River Segment 13e, Sage Creek: Iron Assessment Thresholds and Locations

Fe(ch) = 1250(Trec), median of all data

Assessment locations:

- Yoast Stream Site 2 on Sage Creek (YSS2): located upstream of the west border of Section 18, T5N, R87W

Fe(ch) = 1000(Trec), median of all data

Assessment locations:

- Seneca II-W Stream Site 3 on Sage Creek (WSSF3): located downstream of the west border of Section 18, T5N, R87W

(c) Yampa River Segment 13b: Iron Assessment Thresholds and Locations

Middle Creek-

Mar-Jun, Fe(ch) = 2090(Trec), median of all data

Jul-Feb, Fe(ch) = 1000 (Trec)

Foidel Creek, Fe(ch) = 1000(Trec), median of all data

Assessment locations:

- Middle Creek Site G-MC-2/Site 29: located at N40° 23' 48.3", W106° 58' 47.0"
- Foidel Creek Site 14: located at N40° 33' 48.6", W107° 08' 63.5"
- Foidel Creek Site 8: located at N40° 21' 55.7", W107° 02' 43.6"
- Foidel Creek Site 900: located at N40° 23' 24.7", W106° 59' 40.9"

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**33.52 STATEMENT OF BASIS SPECIFIC STATUTORY AUTHORITY AND PURPOSE JUNE 9, 2014  
RULEMAKING; FINAL ACTION AUGUST 11, 2014; EFFECTIVE DATE DECEMBER 31, 2014**

The provisions of C.R.S. 25-8-202(1)(a), (b) and (2); 25-8-203; 25-8-204; and 25-8-402; provide the specific statutory authority for adoption of these regulatory amendments. The Commission also adopted in compliance with 24-4-103(4) C.R.S. the following statement of basis and purpose.

## **BASIS AND PURPOSE**

### **A. Waterbody Segmentation**

The Commission deleted, renumbered, and/or created new segments to facilitate appropriate organization of waterbodies in this regulation. The following changes were made:

Upper Colorado River Segment 5: This segment was deleted and the lakes and reservoirs in this segment were moved to a new Segment 13 at the end of the subbasin to be consistent with the organization of lakes and reservoirs segments in other basins.

Blue River Segment 1: Based on the information presented by the Upper Blue Sanitation District (UBSD), the mainstem of the Blue River from the confluence with the Swan River to Dillon Reservoir was moved to new Segment 2c to simplify the segmentation of the Upper Blue River and to facilitate the adoption of appropriate nutrient standards.

Blue River Segment 3: This segment was deleted and the lakes and reservoirs in this segment were moved to a new Segment 22 at the end of the subbasin to be consistent with the organization of lakes and reservoirs segments in other basins. The waters previously in Segment 22 were renumbered to Segment 23 as a result.

Eagle River Segments 9a and 9b: The lower portion of Eagle River Segment 9a, the mainstem of the Eagle River from a point immediately below Squaw Creek to a point immediately below Rube Creek, was moved to a new Segment 9b to facilitate the adoption of appropriate temperature standards. Segment 9b was renumbered to 9c to facilitate this change.

Roaring Fork River Segment 3d: The following waters were moved from existing Segment 3a to a new Segment 3d: Cattle Creek, including all tributaries and wetlands, from the source to the most downstream White River National Forest boundary (39.467850, -107.065410). These waters were split into different segments to facilitate the adoption of an Outstanding Waters designation for Segment 3d.

Roaring Fork River Segment 10a and 10b: The following waters were moved from existing Segment 10 to a new Segment 10b: Mainstem of North Thompson Creek, including all tributaries and wetlands, from the source to the White River National Forest boundary (39.316522, -107.305749). Mainstem of Middle Thompson Creek, including all tributaries and wetlands, from the source to a point immediately below the confluence with the South Branch of Middle Thompson Creek (39.295749, -107.308788). These waters were split into different segments to facilitate the adoption of an Outstanding Waters designation for Segment 10b.

Yampa River Segment 1b: The lakes and reservoirs in this segment were moved to a new Segment 21 at the end of the subbasin to be consistent with the organization of lakes and reservoirs segments in other basins. Segment 1a was also changed to Segment 1 as a result.

Yampa River Segment 2b: The lakes and reservoirs in this segment were moved to a new Segment 22 at the end of the subbasin to be consistent with the organization of lakes and reservoirs segments in other basins. Segment 2c was also changed to Segment 2b as a result.

Yampa River Segments 6 and 7: The boundary of these two segments did not change, but the description was altered as it is not the Commission's practice to use the location of an outfall as a segment boundary. The boundary is now described as "a point 0.25 mile below County Road 27" instead of "the point of discharge of the Oak Creek wastewater treatment plant."

Yampa River Segments 13b, 13d, 13e, 13g, 13h, 13i, 13j: The Commission created new segments for a number of segments in the Yampa River sub-basin. Seneca Coal, Peabody Sage Creek Mining LLC, and Twentymile Coal, LLC collected seasonal water quality and biomonitoring data over two years from multiple drainages within Yampa River segments 13b, 13d, 13e. The upper reaches of segments 13b, 13d, and 13e (i.e., Cow Camp Creek, Bond Creek, Little Grassy Creek, Grassy Creek, Sage Creek, and Dry Creek) only flow seasonally, largely in response to spring snowmelt (March – July); the remainder of the year flow is greatly limited. The lower reaches of these segments have limited flow as well; spring flows are consistent, but summer and fall streamflow is primarily restricted to small sections of flowing water and/or isolated pools, likely freezing over in the winter months. The only exceptions to this flow regime are the mainstems of Fish, Foidel, and Middle Creeks, which normally maintain flow year-round, and select locations within lower Dry and Grassy Creeks which maintain sufficient pools to support hold-over populations of fish. The reaches of the streams with ephemeral flows have been included in segments 13d, 13e, 13g, 13h, 13i. The streams with perennial flows have been included in segments 13b and 13j.

Yampa River Segments 22 and 23: Elkhead Reservoir was moved to a new Segment 23. These waters were split into different segments to facilitate a revision of the Aquatic Life use from Cold 1 to Warm 1.

The following segment descriptions were edited to improve clarity, correct typographical errors, and correct spelling errors:

Upper Colorado River Segment: 6c and 13  
Blue River Segment: 8 and 6b  
Eagle River Segments: 2, 5a and 11  
Yampa River Segments: 8, 14, 15 and 18

#### B. Revised Aquatic-Life Use Classifications

Yampa River Segment 23: Based on a Use Attainability Analysis (UAA) prepared by Colorado Parks and Wildlife and the Colorado River Water Conservation District, the Commission adopted a change in the Aquatic Life use classification and standard from Cold 1 to Warm 1 and a new Yampa River Segment 23 for Elkhead Reservoir. Available temperature and fish data identify that the original classification of Elkhead Reservoir as a cold water lake was in error and that only warm water species are expected to occur due to natural and man-induced irreversible conditions.

Yampa River Segments 13b, 13g: Based on fish species expected to be present, temperature data, and other available evidence in a Use Attainability Analysis submitted by Seneca Coal, Inc., the Commission changed the aquatic life use classification for Yampa River segment 13b from Cold 1 to Warm 1. For Segment 13g the Commission maintained the aquatic life use classification of Warm 1. The Commission found that this was necessary to protect the fish collected in tributaries to Fish Creek in segment 13g, which included a round tail chub, a species that has been designated by Colorado Parks and Wildlife as a species of special concern. It is likely that the chub and other species use the streams in 13g when flow and habitat are present. Segments 13h, 13i, and 13j inherited their aquatic life use classifications as a result of re-segmentation.

#### C. Recreation Classifications and Standards

A review of the segments with an existing Recreation use classification showed that one segment had an incorrect E. coli standard to protect that use. The E. coli standard was corrected for the following segment:

Upper Colorado River Segment: 6a

#### D. Water Supply Use Classification and Standards

The Commission added a Water Supply use classification and standards where the evidence demonstrated a reasonable potential for a hydrological connection between surface water and alluvial wells used for drinking water. The Water Supply use classification and standards were added to the following segments:

Roaring Fork River Segment: 4  
North Platte River Segment: 6  
Yampa River Segment: 7

Numerous segments were missing the “(dis)” notation for the manganese water supply standard. These errors were corrected to “Mn(ch)=WS(dis)”.

A molybdenum standard of 210 ug/l was applied to the following segments to protect the Water Supply use classification:

Blue River Segments: 14 and 15

Blue River Segment 13: The Commission adopted a narrative standard for segment 13 to protect water supply uses in downstream waters. It is the Commission's intent that permit effluent limits for sources in segment 13 are written to protect downstream uses.

#### E. Agriculture Standards

Molybdenum: In 2010, the Commission adopted a new standard for molybdenum to protect cattle from the effects of molybdenosis. The table value adopted at that time was 300 ug/l, but included an assumption of 48 mg/day of copper supplementation to ameliorate the effects of molybdenosis. State and local experts on cattle nutrition indicated that copper supplementation in the region is common, but is not universal. Therefore, copper supplementation assumption was removed from the equation, which yields a standard of 160 ug/l. The Commission expects that this value may be revised when data on the copper and molybdenum content of local forage becomes available. The Commission also notes that in light of EPA's disapproval of the 300 ug/l table value in the Basic Standards and Methodologies for Surface Water, the Commission intends to review this value during the next Basic Standards triennial review.

The Agriculture table value assumes that the safe copper:molybdenum ratio is 4:1. Food and water intake is based on a 273 kg (600 lb) feeder steer consuming 6.8 kg/day of dry matter and 20% of its body weight in water per day. Total copper and molybdenum intakes are calculated from the following equations:

$$\text{Cu intake mg/day} = ([\text{Cu}] \text{ forage, mg/kg}) \times (\text{forage intake, kg/day}) + ([\text{Cu}] \text{ water, mg/l}) \times (\text{water intake, L/day}) + (\text{Cu supplementation, mg/day})$$

$$\text{Mo intake mg/day} = ([\text{Mo}] \text{ forage, mg/kg}) \times (\text{forage intake, kg/day}) + ([\text{Mo}] \text{ water, mg/l}) \times (\text{water intake, L/day}) + (\text{Mo supplementation, mg/day})$$

The assumed values for these equations are as follows:

[Cu] forage = 7 mg/kg, [Mo] forage = 0.5 mg/kg, forage intake = 6.8 kg/day, [Cu] water = 0.008 mg/L, [Mo] water = 0.375 mg/L, water intake = 54.6 L/day, Cu supplementation = 0 mg/day, Mo supplementation = 0 mg/day.

A molybdenum standard of 160 ug/l was adopted for the following segments in Regulation 33 that have an Agriculture use classification, and where livestock or irrigated forage are present or expected to be present.

Upper Colorado River Segments: 1, 2, 3, 4, 6a, 6b, 6c, 7a, 7b, 7c, 8, 9, 10a, 10b, 10c, 11, 12 and 13

Blue River Segments: 1, 2a, 2b, 2c, 4a, 4b, 5, 6a, 6b, 8, 9, 10, 11, 12, 16, 17, 18, 19, 20, 21, 22 and 23  
Eagle River Segments: 1, 2, 3, 4, 5a, 5b, 5c, 6, 7a, 7b, 8, 9a, 9b, 9c, 10a, 10b, 11, 12, 13 and 14  
Roaring Fork River Segments: 1, 2, 3a, 3b, 3c, 3d, 4, 5, 6, 7, 8, 9, 10a, 10b, 11 and 12  
North Platte River Segments: 1, 2, 3, 4a, 4b, 5a, 5b, 6, 7a, 7b, 8 and 9  
Yampa River Segments: 1, 2a, 2b, 3, 4, 5, 6, 7, 8, 11, 12, 13a, 13b, 13c, 13d, 13e, 13f, 13g, 13h, 13i, 13j, 14, 15, 18, 19, 20a, 20b, 21, 22, and 23

The following segments have an Agriculture use classification, but livestock or irrigated forage are not expected to be present. A molybdenum standard of 160 ug/l was not applied to these segments to protect the Agriculture use classification:

Blue River Segments: 13, 14 and 15

Upper Colorado Segment 8: A site-specific molybdenum standard of 190 ug/l was adopted for this segment, which has an Agriculture use classification, and livestock and irrigated forage are present or expected to be present. This site-specific molybdenum standard is based on protection of a lactating cow (409 kg), which is the animal and life stage that is most sensitive to molybdenum, and site-specific factors appropriate for the Williams Fork area. The equation above and in the Regulation #31 Statement of Basis (2010, 31.48 H) was used with the following dietary and water intake values : [Cu] forage = 7 mg/kg, [Mo] forage = 0.5 mg/kg, forage intake = 10.2 kg/day (OSU, 2004), [Cu] water = 0.008 mg/L, [Mo] water = 0.375 mg/L, Cu supplementation = 0 mg/day, Mo supplementation = 0 mg/day. Water intake = 67.8 L/day (NRC, 2000), based on an ambient temperature of 80°C (ave. daily max. at Kremmling, CO).

#### F. Changes to Antidegradation Designation

Roaring Fork Segment 3d: The Commission adopted an Outstanding Waters (OW) designation for this segment based on evidence presented by WildEarth Guardians showing that water quality meets the requirements of 31.8(2)(a). The presence of designated Critical Cutthroat Trout Habitat by the State of Colorado proves the exceptional recreational or ecological significance of the waters. Outreach conducted by WildEarth Guardians demonstrated support for the change in designation, the outstanding nature of these waters and the need for the additional protection of the outstanding waters designation.

The Commission understands that existing land uses, including grazing, are in place in these watersheds. The evidence demonstrates that these existing land uses are compatible with the OW designation since the current high level of water quality has been attained with these uses in place. It is the Commission's intent that this OW designation should not be used to establish additional permit requirements for existing uses within this area.

Roaring Fork Segment 10b: The Commission adopted an Outstanding Waters (OW) designation for this segment based on evidence presented by Trout Unlimited showing that the criteria of 31.8(2)a has been met for these waters. In addition to meeting the water quality requirements of 31.8(2)a, these waters support Colorado River cutthroat trout, including key conservation populations in North and Middle Thompson Creek. The Colorado River cutthroat trout is listed as a species of concern in Colorado and is subject to a conservation agreement to prevent potential federal Endangered Species Act listing. The Commission notes that the outreach undertaken by Trout Unlimited as proponent of this designation helps to demonstrate broad support for the conclusion that these waters constitute an outstanding natural resource and that the additional protection provided by this designation is appropriate.

The Commission understands that existing land uses, including grazing, are in place in these watersheds. The evidence demonstrates that these existing land uses are compatible with the OW designation since the current high level of water quality has been attained with these uses in place. It is the Commission's intent that this OW designation should not be used to establish additional permit requirements for existing uses within this area.



Yampa River Segments 13d, 13e, 13h, 13i, and 13j: The Commission retained use protected designation for segments 13d and 13e, and segments 13h, 13i, and 13j inherited their use protected designations as a result of re-segmentation.

#### G. Ambient Standards

Ambient standards are adopted where natural or irreversible man-induced conditions result in exceedances of table value standards. The Commission reviewed the information that is the basis for these standards, as well as any new information that would indicate whether they are still appropriate, need to be modified, or should be dropped. In some cases, new ambient standards were adopted. The following segments have ambient-based standards that were revised:

Upper Colorado River Segments: 12 (Lake Granby) and 13 (Wolford Mountain)  
North Platte River Segment: 9 (Lake John)  
Yampa River Segments: 13b (Middle Creek) and 22 (Stagecoach Reservoir)

New ambient based standards were adopted for the following segments:

North Platte River Segment: 9 (South Delaney Lake)  
Yampa River Segment: 2b (Pearl Lake)

Yampa River Segment 13b: Foidel Creek is achieving the table value standard for total recoverable iron which is 1000 ug/L with assessment locations specified in 33.6(4)(c), which the Commission adopted due to spatial variability in iron concentrations throughout the stream reach. Accordingly the Commission retained the 1000 ug/L total recoverable iron standard for Foidel Creek. The Commission updated the annual ambient-based standard on Middle Creek to a seasonal ambient-based standard for March-June of 2090 ug/L, based on the most recent five years of data. TVS applies for the remainder of the year for Middle Creek.

Yampa River Segments 13h and 13j: While the Commission did not adopt ambient based selenium standards proposed in this hearing on these segments, parties are encouraged to collect additional data to further evaluate the appropriateness of an ambient based selenium standard in the future.

#### H. Aquatic Life Ammonia and Metals Standards

**New Table Value Standards**: The zinc, zinc sculpin, and aluminum table values were revised in the 2010 Basic Standards hearing. The acute and chronic zinc, zinc sculpin, and aluminum equations in 33.6(3) were modified to conform to Regulation 31. The footnotes to the table values in 33.6(3) were renumbered to match the appropriate references. Footnote (4 old) was deleted and a new footnote 4 was added.

**Zinc sculpin standards**: In low-hardness situations (hardness below 102 mg/l), the zinc equation is not protective of mottled sculpin (*Cottus bairdi*), a native west-slope fish species. A review of existing hardness and fishery data showed numerous segments with low average hardness (<102 CaCO<sub>3</sub> mg/l) and where the Colorado Division of Parks and Wildlife expects sculpin to be present. A sculpin-specific zinc equation was added to the following segments:

Blue River Segments: 13 and 18  
Eagle River Segment: 3  
Roaring Fork River Segment: 7  
Yampa River Segment: 1

For the following segments where hardness could exceed 102 mg/l, both the zinc sculpin standard and the chronic zinc table value standard were adopted:

Upper Colorado River Segments: 1, 2, 3, 7b, 8, 10a, 10b and 10c

Blue River Segments: 1, 4a, 4b, 8, 14 and 17  
Eagle River Segments: 1, 2, 4, 6, 7a and 8  
Roaring Fork River Segments: 2, 5, 6, 10a and 10b  
Yampa River Segments: 2a, 2b, 3, 8, 13a, 18 and 19

#### I. Uranium Standards

At the 2010 Basic Standards rulemaking hearing, the Commission changed the Water Supply table value for uranium from 30 ug/l to a hyphenated standard of 16.8-30 ug/l. The Commission revised the language in 33.5(3)(c) to reflect the change to the basin-wide standard. A new section 33.5(3)(c)(i) was added to explain the hyphenated standard. Subsection 33.5(3)(d) was deleted because it was redundant with 33.5(3)(c).

#### J. Temporary Modifications

To remain consistent with the Commission's decisions regarding arsenic at 33.50, all existing temporary modifications for arsenic of "As(ch)=hybrid" (expiration date of 12/31/21) were retained. An arsenic temporary modification was added to the following segments, which had an existing or newly added chronic arsenic standard of 0.02 ug/l and a permitted discharger with a predicted water quality-based effluent limit compliance problem:

Upper Colorado River Segment: 10c  
Roaring Fork River Segment: 4  
Yampa River Segment: 7

Where the Commission has adopted a narrative temporary modification of "current condition", the Commission intends that, when implementing the temporary modification in a CDPS permit, the permit conditions will reflect the current effluent quality, recognizing that it changes over time due to seasonal variability, change in the influent flow and the concentration over time.

#### Iron

Yampa River Segments 13d and 13i: The Commission adopted a narrative temporary modification for iron on the former segment 13e in the 2008 basin hearing and the temporary modification has remained in place. Since that time Peabody has been working on resolving the uncertainty surrounding the appropriate underlying standard. The Commission adopted a current conditions narrative temporary modifications on segments 13d and 13i (13i is a new segment that was formerly a part of 13e) until December 31, 2016. The Commission expects that Peabody will work with the Division and other interested stakeholders to develop a definitive plan to resolve the uncertainty for these segments for the December 2014 temporary modification hearing.

#### Selenium

Yampa River Segments 13b, 13d, 13e, 13g, 13i: Seneca Coal, Peabody, and Twentymile originally proposed numeric fish tissue-based site-specific standards for selenium for Yampa River segments 13b, 13d, 13e, 13g and 13i. In support of their proposal they provided data including in-stream selenium concentration and fish-tissue selenium concentrations along with proposed implementation methodologies. However, during the rulemaking process EPA issued new draft selenium criteria. In response to EPA's May 2014 draft selenium criteria, Seneca Coal, Peabody, and Twentymile withdrew their site-specific standard proposal and revised their proposal to a narrative "current conditions" temporary modification for selenium for these segments.

The Commission adopted a current conditions temporary modification for selenium for these segments. Peabody presented information that shows a demonstrated or predicted compliance problem for each of these segments. Additionally, the Commission found there was significant uncertainty regarding the

water quality standard necessary to protect current and/or future uses, and that there is substantial uncertainty about the extent to which existing quality is the result of natural or irreversible human-induced conditions.

#### Molybdenum

Blue River Segment 14: The Commission adopted a temporary modification of the molybdenum standard for this segment of Mo(ch)="current conditions" (Exp. 12/31/16). The Commission recognizes that there is new toxicological information that should be included in recalculation of a human health-based criterion. Parties do not agree on the uncertainty factors that need to be included in the calculations. Since this issue is larger than a segment-specific issue, it is more appropriate to address this situation in the review of the Basic Standards and the expiration date was set to accommodate that schedule. There is also uncertainty regarding the extent to which existing quality in Blue River Segment 14 is the result of irreversible human-induced conditions due to forthcoming new treatment facilities at the Climax Mine. Climax also presented information that shows a predicted compliance problem and has submitted an adequate plan for eliminating the need for the temporary modification.

#### K. Temperature

##### Ambient temperature standards for lakes

In the 2008 triennial review, the WAT standard was found to be unattainable for a number of cold large lakes and reservoirs with apparently healthy cold-water fish populations. Because summertime temperature in the mixed layer for large lakes and reservoirs is very well correlated to the waterbody's elevation, the Commission adopted ambient temperature standards for large lakes wherever data were available to characterize a WAT and the thermal characteristics of the lakes and reservoirs were determined to be the result of natural conditions. As a result of setting ambient temperature standards, the adequate refuge defined in Regulation 31, Table 1, footnote 5(c)(iii) was assessed using the site-specific temperature standard, and many lakes with obvious dissolved oxygen issues were considered to have adequate refuge.

Footnote 5(c)(iii) states:

When a lake or reservoir is stratified, the mixed layer may exceed the criteria in Table 1 provided that an adequate refuge exists in water below the mixed layer. Adequate refuge depends on concurrent attainment of applicable dissolved oxygen standards. If the refuge is not adequate because of dissolved oxygen levels, the lake or reservoir may be included on the 303(d) List as "impaired" for dissolved oxygen, rather than for temperature.

To ensure that adequate refuge is defined in a way that protects the Aquatic Life use, the Commission adopted footnote "D" which was applied to the temperature standard for deep stratified lakes. Footnote "D" states "Assessment of adequate refuge shall rely on the Cold Large Lake table value temperature criterion and applicable dissolved oxygen standard rather than the site-specific temperature standard", and was applied to the following lake segments:

Upper Colorado River Segment: 12 (Shadow Mountain and Lake Granby)  
Upper Colorado River Segment: 13 (Wolford Mountain and Williams Fork Reservoirs)  
Roaring Fork River Segment: 12 (Ruedi Reservoir)  
Yampa River Segment: 22 (Pearl Lake, Stagecoach and Steamboat Reservoirs)

Eagle River Segments 8, 9a, 9b and 9c: In the 2008 hearing, the Commission adopted temperature standards for Eagle River Segments 8 and 9a. Due to the limited temperature and biological information available at the time, the Commission recognized that there was uncertainty regarding the appropriate temperature standards adopted in that hearing. Since 2008, Eagle River Water and Sanitation District (ERWSD) has collected temperature data in Segments 8 and 9a and has worked with Colorado Parks

and Wildlife (CPW) to determine the aquatic species expected to occur in Gore Creek and the Eagle River.

In this hearing, based on information presented by ERWSD and CPW, the Commission adopted site-specific temperature standards for Eagle River segments 8, 9a, and 9b to protect the aquatic life use (31.7(1)(b)(iii)) and re-segmentation where appropriate (Section A). The spring shoulder season standards were adjusted to protect cutthroat trout spawning and incubation. The fall shoulder season standards were adjusted to protect brook and brown trout migration and spawning. The basis for these temperature standards is specific to the temperature and biological conditions in the Eagle River Segments 8, 9a, and 9b, and accounts for the seasonal temperature requirements for the various life stages of the aquatic species expected to occur in this area while recognizing that these segments include a transitional zone between Cold Stream Tier I and Tier II. This action is not intended to revise the biological goals for the Eagle River established by the Commission in 2008, regarding the Eagle Mine Superfund Site.

The Commission recognizes the high quality fishery that exists in these segments is economically important, yet is currently stressed and in recovery. Local stakeholders are actively working to protect and improve water quality including projects associated with urban runoff, stream and riparian restoration, hydrologic conditions, and the Eagle Mine Superfund Site. Future refinements of temperature standards for these segments may be warranted as more information becomes available regarding their natural and existing thermal regimes, and the temperatures needed to protect the aquatic species expected to occur.

Segment 8: The lower portion of this segment is currently designated a Gold Medal Fishery. Cutthroat, brook, brown and rainbow trout are all expected to occur in this segment. The Commission adopted site-specific chronic temperature standards based on a modification of Cold Stream Tier I table values

Segment 9a: This segment is impacted by metals contributions from historic mining. Cutthroat, brook, rainbow, and brown trout could occur in this segment. The Commission adopted site-specific chronic temperature standards based on a modification of Cold Stream Tier I table values.

Segment 9b: This segment is also impacted by metals contributions from historic mining. Rainbow and brown trout are expected to occur in this segment, and this area is a transition zone. Cutthroat and brook trout may use this segment seasonally, and when hydrologic conditions are favorable. The Commission adopted site-specific acute and chronic temperature standards based on a modification of Cold Stream Tier II table values.

Segment 9c: Segment 9b was renumbered to segment 9c, and retained its use classifications and Cold Stream Tier II temperature standards.

Yampa River Segments 13b, 13d, 13e, 13g, 13h, 13i, and 13j: Based on fish species expected to be present, temperature data, and other available evidence submitted by Peabody, Warm Stream Tier II temperature standards were retained for segments 13d and 13e, and were adopted for segments 13b and 13g. Segments 13h, 13i, and 13j inherited their Warm Stream Tier II temperature standards as a result of re-segmentation.

#### L. Nutrients

In March 2012, the Commission adopted interim nutrient values in the Basic Standards (Regulation 31) and created a new statewide control regulation (Regulation 85) to address nutrients in Colorado. Regulation 31.17 includes interim nutrient values for total phosphorus, total nitrogen, and chlorophyll a for both lakes and reservoirs, and rivers and streams. Due to the phased implementation approach adopted with these criteria (31.17(e)), the Commission adopted only total phosphorus and chlorophyll a standards at this time. Nitrogen standards were not considered as part of this rulemaking hearing, but will be

considered in the next triennial review, currently scheduled for June, 2019.

Total phosphorus and chlorophyll a standards were adopted for waters upstream of all permitted domestic wastewater treatment facilities discharging prior to May 31, 2012 or with preliminary effluent limits requested prior to May 31, 2012, and any non-domestic facilities subject to Regulation 85 effluent limits and discharging prior to May 31, 2012. A new section (4) was added at 33.5 describing implementation of the interim nutrient values into the tables at 33.6, and includes a table which lists these facilities and the segment to which they discharge.

- For segments located entirely above these facilities, nutrient standards apply to the entire segment.
- For segments with portions downstream of these facilities, *nutrient standards only apply above these facilities*. A footnote "C" was added to the total phosphorus and chlorophyll a standards in these segments. The footnote references the table of qualified facilities at 33.5(4).
- For segments located entirely below these facilities, nutrient standards do not apply.
- For rivers and streams segments, total phosphorus standards were adopted above the dischargers listed at 33.5(4) for segments with an Aquatic Life use. Chlorophyll a standards were adopted above the dischargers listed at 33.5(4) for segments with either an E, P, or U Recreation use classification.
- For lakes and reservoirs segments, total phosphorus and chlorophyll standards were adopted with a footnote "B" as these standards only apply to waterbodies larger than 25 acres surface area.

31.17(e)(ii) also allows the Commission to adopt numeric nutrient standards for Direct Use Water Supply (DUWS) lakes and reservoirs. No proposals were made by the Division to adopt standards based on this provision in this rulemaking.

31.17(e)(iii) also allows the Commission to adopt numeric nutrient standards for circumstances where the provisions of Regulation 85 are not adequate to protect waters from existing or potential nutrient pollution. No proposals were made to adopt standards based on this provision in this rulemaking.

Chlorophyll a standards were adopted for the following segments:

Upper Colorado River Segments: 1, 2, 3, 4, 6a, 7b, 8, 9, 10a, 11, 12 and 13  
Blue River Segments: 1, 2a, 4a, 4b, 5, 6a, 6b, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 21, 22 and 23  
Eagle River Segments: 1, 2, 3, 4, 6, 7a, 7b, 8, 10a, 10b, 11, 12, 13 and 14  
Roaring Fork River Segments: 1, 2, 3a, 3c, 3d, 4, 5, 6, 7, 8, 9, 10a, 10b, 11 and 12  
North Platte River Segments: 1, 2, 3, 4a, 4b, 5a, 8 and 9  
Yampa River Segments: 1, 2a, 3, 5, 6, 7, 8, 13a, 13b, 13c, 13d, 13f, 13g, 13h, 14, 15, 18, 19, 20a, 21, 22 and 23

Total Phosphorus standards were adopted for the following segments:

Upper Colorado River Segments: 1, 2, 3, 4, 6a, 6b, 7a, 7b, 7c, 8, 9, 10a, 11, 12 and 13  
Blue River Segments: 1, 2a, 4a, 4b, 5, 6a, 6b, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22 and 23  
Eagle River Segments: 1, 2, 3, 4, 6, 7a, 7b, 8, 10a, 10b, 11, 12, 13 and 14  
Roaring Fork River Segments: 1, 2, 3a, 3b, 3c, 3d, 4, 5, 6, 7, 8, 9, 10a, 10b, 11 and 12  
North Platte River Segments: 1, 2, 3, 4a, 4b, 5a, 5b, 6, 7a, 7b, 8 and 9  
Yampa River Segments: 1, 2a, 3, 4, 5, 6, 7, 8, 11, 12, 13a, 13b, 13c, 13d, 13e, 13f, 13g, 13h, 13i,

13j, 14, 15, 18, 19, 20a, 20b, 21, 22 and 23

Blue River Segments 1, 2a, 2b and 2c: Nutrient standards were adopted for Blue River Segment 1, as this segment is located entirely above qualified dischargers. Nutrient standards were adopted with a footnote “C” for Segment 2a, as the Upper Blue Sanitation District’s (UBSD) Iowa Hill Water Reclamation Facility is a qualified discharger listed at 33.5(4) and is located within this segment. Nutrient standards were not adopted for Blue River Segment 2b and new Segment 2c, as these segments are located entirely below the Iowa Hill Water Reclamation Facility and nutrient standards do not apply.

The UBSD’s South Blue River wastewater treatment facility is located within Blue River Segment 1. However, this facility discharges to groundwater and it is not subject to Regulation 85 nutrient limitations for surface water discharges. It is therefore not a qualified discharger listed at 33.5(4). If the nature of the discharge from UBSD’s South Blue River wastewater treatment facility changes to include a discharge to surface water, this issue will be revisited to reflect such a change.

#### M. Direct Use Water Supply Sub-classification

Also in the March 2012 rulemaking hearing, the Commission adopted a sub-classification of the Domestic Water Supply Use called “Direct Use Water Supply Lakes and Reservoirs Sub-classification” (Regulation 31, at 31.13(1)(d)(i)). This sub-classification is for water supply lakes and reservoirs where there is a plant intake location in the lake or reservoir or a man-made conveyance from the lake or reservoir that is used regularly to provide raw water directly to a water treatment plant that treats and disinfects raw water. In this action today, the Commission has begun to apply this sub-classification and anticipates that it will take several basin reviews to evaluate all the reservoirs in the basin. The Commission adopted the DUWS sub-classification on the following reservoirs and added “DUWS” to the classification column in the standards tables. The public water systems are listed along with the reservoirs and segments.

Upper Colorado River Segment 12:	Grand Lake (YMCA)
Upper Colorado River Segment 13:	Ute Creek Reservoir (Climax – Henderson Mill)
Blue River Segment 22:	Goose Pasture Tarn (Town of Breckenridge)
Roaring Fork River Segment 12:	Leonard Thomas Reservoir (City of Aspen)
Roaring Fork River Segment 12:	Wildcat Reservoir (Wildcat Ranch)
Yampa River Segment 22:	Steamboat Lake (Steamboat Lake State Park)
Yampa River Segment 22:	Stagecoach Reservoir (Stagecoach State Park)
Yampa River Segment 22:	Yampa River Holding Pond (PSCO OF CO - Hayden Station)

31.17(e)(iii) also allows the Commission to adopt numeric nutrient standards for Direct Use Water Supply (“DUWS”) lakes and reservoirs. No standards were adopted based on this provision in this rulemaking.

#### N. Chromium III Standards

A review of the chromium III standards showed that standards to protect the Aquatic Life use classification may not be protective of the Agriculture use in some high-hardness situations. A chromium III standard of CrIII(ch)=100(Trec) was added to segments with Aquatic Life and Agriculture use classifications, but no Water Supply use. The acute chromium III standard associated with the Water Supply use is protective of the Agriculture use, but is not protective of the Aquatic Life use when hardness is less than 61 ug/l. For segments that have both Aquatic Life and Water Supply use classifications, a chronic chromium III standard of CrIII(ch)=TVS was added to all segments that did not previously have that standard. Changes were made to the following segments:

Upper Colorado River Segments: 3, 4, 6c, 7a, 7b, 7c, 9, 11, 12 and 13  
Blue River Segments: 1, 6a, 6b, 11, 12, 13, 14, 16, 17, 19, 20, 21, 22 and 23  
Eagle River Segments: 2, 3, 5a, 5b, 5c, 8, 9a, 9b, 9c, 10a, 10b, 12, 13 and 14  
Roaring Fork River Segments: 1, 3a, 3b, 3c, 3d, 4, 6, 7, 8, 9, 10a, 10b, 11 and 12  
North Platte River Segments: 3, 6, 7a, 7b, 8 and 9

Yampa River Segments: 2a, 2b, 5, 6, 7, 13a, 13b, 13c, 13d, 13e, 13f, 13g, 13h, 13i, 13j, 14, 15, 19, 20a, 20b, 21, 22 and 23

O. Other Site-Specific Revisions

Upper Colorado River Segment 12: The Commission determined in 2008 that the adoption of a 4 meter numerical standard with a delayed effective date was an appropriate policy choice to encourage cooperative efforts to improve Grand Lake clarity. At the same time, the Commission adopted the following narrative "The highest level of clarity attainable, consistent with the exercise of established water rights and the protection of aquatic life" as the effective standard. Efforts since 2008 have focused on data collection and understanding the factors controlling clarity.

In today's action, the Commission adopted a change to the narrative clarity standard that added "protection of water quality throughout the Three Lakes System" as another consideration for attainability in order to recognize the interdependence of water quality in the entire system. The Commission also decided that further delay in the effective date of the numerical standard was justified in view of the progress that has been made cooperatively by the parties and by the obstacles they have yet to overcome.

Sufficient effort has not yet been focused on determining an "attainable" level of clarity that is consistent with the constraints identified in the narrative standard. It is the Commission's hope that improvement in clarity can be achieved by a balanced approach that does not sacrifice water rights, the recreational fishery, or water quality. The Commission expects and anticipates a cooperative effort that will focus on identifying an attainable and protective Grand Lake clarity standard. The effort should address the following questions that consider the constraints imposed on attainability:

- 1) What are the water rights constraints?
- 2) What are the aquatic life constraints?
- 3) What are the water quality constraints from the perspective of the Three Lakes system?
- 4) What are the financial constraints?

The Commission expects that the cooperative effort will also evaluate alternatives for describing the water transparency necessary to protect the assigned use classifications

Ultimately, the goal of the effort is to develop and propose by January 2016 an attainable and protective clarity standard for Grand Lake for consideration by the Commission. If this cooperative effort does not result in a proposal for an attainable and protective clarity standard by January 2016, the standard will be determined by a site specific clarity standard hearing to be scheduled for 2016.

Blue River Segment 5: The pH standard for Soda Creek was changed from 6.0-9.0 to the table value of 6.5-9.0, based on data demonstrating this value was currently being attained.

Eagle River Segment 11: The "(ac)" notation was deleted from the nitrite and nitrate standards for this segment.

Roaring Fork River Segment 3b: A footnote "A" was added to the chronic arsenic standard to explain the hyphenated standard.

Yampa River Segment 4: A footnote "A" was added to the chronic arsenic standard to explain the hyphenated standard.

Yampa River Segment 13d: A footnote "A" was added to the chronic arsenic standard to explain the

hyphenated standard.

#### PARTIES TO THE RULEMAKING HEARING

1. Grand County, Northwest Colorado Council of Governments and Northern Colorado Water Conservancy District
2. Eagle River Water and Sanitation District
3. Trout Unlimited
4. WildEarth Guardians
5. Tri-State Generation and Transmission Association
6. Seneca Coal Company, Peabody Sage Creek Mining, LLC, and Twentymile Coal Company
7. Western Resource Advocates
8. Colorado River Water Conservation District
9. Climax Molybdenum Company
10. Trapper Mining, Inc.
11. Upper Blue Sanitation District
12. Clinton Ditch & Reservoir Company
13. Vail Resorts, Inc. and Vail Summit Resorts, Inc.
14. Eagle Park Reservoir Company
15. Upper Eagle Regional Water Authority
16. Colorado Parks and Wildlife
17. Denver Water
18. Environmental Protection Agency
19. Powdr-Copper Mountain, LLC
20. Town of Frisco



## STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS

REGION:12		Desig	Classifications	NUMERIC STANDARDS						TEMPORARY MODIFICATIONS AND QUALIFIERS
BASIN: Upper Colorado River				PHYSICAL and BIOLOGICAL	INORGANIC mg/l		METALS ug/l			
Stream Segment Description										
1.	Mainstem of the Colorado River, including all tributaries and wetlands, within Rocky Mountain National Park, or which flow into Rocky Mountain National Park.	OW	Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I)°C D.O. = 6.0 mg/l D.O. (sp)=7.0 mg/l pH = 6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS Zn(ch)=TVS(sc)	
2.	Mainstem of the Colorado River, including all tributaries and wetlands within, or flowing into Arapahoe National Recreation Area.		Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I)°C D.O. = 6.0 mg/l D.O. (sp)=7.0 mg/l pH = 6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS Zn(ch)=TVS(sc)	
3.	Mainstem of the Colorado River from the outlet of Lake Granby to the confluence with Roaring Fork River.		Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-II)°C D.O. = 6.0 mg/l D.O. (sp)=7.0 mg/l pH = 6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup> °	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot) °	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS Zn(ch)=TVS(sc)	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
4.	All tributaries to the Colorado River, including all wetlands, from the outlet of Lake Granby to the confluence with the Roaring Fork River, which are on National Forest lands, except for those tributaries included in Segments 1 and 2, and specific listings in Segments 8, 9 and 10a.		Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
5.	Deleted.									
6a.	All tributaries to the Colorado River, including all wetlands, from the source to a point immediately above the confluence with the Blue River and Muddy Creek, which are not on National Forest lands, except for specific listings in Segments 1, 2, 4, 5, 6b, 6c, 8, 9 and 10a-c.		Aq Life Cold 1 Recreation P Water Supply Agriculture	T=TVS(CS-I)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=205/100ml Chla=150 mg/m <sup>2</sup> °	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 NO <sub>2</sub> =0.05 B=0.75 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot) °	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS	Cu(ac/ch)=TVS Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
6b.	Mainstem of un-named tributary from the headwaters (Sec 32, T3N, R76W) to Willow Creek Reservoir Road (Section 8, T2N, R76W).		Aq Life Cold 2 Recreation N Agriculture	T=TVS(CS-II)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=630/100ml	CN(ac)=0.2	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =100 P=110 ug/l (tot) °	As(ac)=340(dis) As(ch)=100 Cd(ch)=10 CrIII(ch)=100 CrVI(ch)=100	Cu(ac)=200 Pb(ch)=100 Mn(ch)=200 Mo(ch)=160 Ni(ac/ch)=200	Se(ch)=20 Zn(ch)=2000	All metals are Trec unless otherwise noted.
6c.	Mainstem of un-named tributary to Willow Creek from the Willow Creek Reservoir Rd (Sec. 8, T2N, R76W) to the confluence with Willow Creek (Sec. 17, T2N, R76W).		Aq Life Cold 2 Recreation N Agriculture	T=TVS(CS-II)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=630/100ml	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =100	As(ac)=340 As(ch)=100(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac/ch)=TVS CrIII(ch)=100(Trec) CrVI(ac/ch)=TVS	Cu(ac/ch)=TVS Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	

# STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS

REGION:12		Desig	Classifications	NUMERIC STANDARDS						TEMPORARY MODIFICATIONS AND QUALIFIERS
BASIN: Upper Colorado River				PHYSICAL and BIOLOGICAL	INORGANIC mg/l		METALS ug/l			
Stream Segment Description										
7a. All tributaries to the Colorado River, including all wetlands, from a point immediately above the confluence with the Blue River and Muddy Creek to a point immediately below the confluence with the Roaring Fork River, which are not on National Forest lands, except for specific listings in Segment 7b, 7c and in the Blue River, Eagle River, and Roaring Fork River basins.			Aq Life Cold 1 Recreation N Water Supply Agriculture	T=TVS(CS-II)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=630/100ml	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
7b. Mainstem of Muddy Creek, including all tributaries and wetlands, from the outlet of Wolford Mountain Reservoir to the confluence with the Colorado River; mainstems of Rock Creek, Deep Creek, Sheephorn Creek, Sweetwater Creek and the Piney River, including all tributaries and wetlands, from their sources to their confluences with the Colorado River, which are not on National Forest lands.			Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup> c	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot) c	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS Zn(ch)=TVS(sc)	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
7c. Mainstem of Muddy Creek from the source to a point immediately below the confluence with Eastern Gulch as well as all tributaries to and wetlands of Muddy Creek from the source to the outlet of Wolford Mountain Reservoir, except for listings in Segment 4. The mainstems of Derby, Blacktail, Cabin, and Red Dirt Creeks (all below Wolford Mountain Reservoir), including all tributaries and wetlands, from their sources to their confluences with the Colorado River, except for listings in Segment 4.			Aq Life Cold 1 Recreation N Water Supply Agriculture	T=TVS(CS-I)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=630/100ml	NH <sub>3</sub> (ac/ch)=TV S Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
8. Mainstem of the Williams Fork River, including all tributaries and wetlands from the source to the confluence with the Colorado River, except for those tributaries listed in Segment 9.			Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100 Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=190(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS Zn(ch)=TVS(sc)	Point of compliance for Fe and Mn at Aspen Canyon Ranch well.  Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
9. All tributaries to the Colorado and Fraser Rivers, including all wetlands, within the Never Summer, Indian Peaks, Byers, Vasquez, Eagles Nest and Flat Tops Wilderness Areas.		OW	Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
10a. Mainstem of the Fraser River from the source to a point immediately below the Rendezvous Bridge. All tributaries to the Fraser River, including wetlands, from the source to the confluence with the Colorado River, except for those tributaries included in Segment 9.			Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup> c	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot) c	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS Zn(ch)=TVS(sc)	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.

## STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS

REGION:12		Desig	Classifications	NUMERIC STANDARDS						TEMPORARY MODIFICATIONS AND QUALIFIERS
BASIN: Upper Colorado River				PHYSICAL and BIOLOGICAL	INORGANIC mg/l		METALS ug/l			
Stream Segment Description										
10b. Mainstem of the Fraser River from a point immediately below the Rendezvous Bridge to a point immediately below the Hammond Ditch.			Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-II)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS Zn(ch)=TVS(sc)	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
10c. Mainstem of the Fraser River from a point immediately below the Hammond Ditch to the confluence with the Colorado River.			Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-II)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS Zn(ch)=TVS(sc)	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
11. All lakes and reservoirs within Rocky Mountain National Park and within the Never Summer, Indian Peaks, Byers, Vasquez, Eagles Nest and Flat Tops Wilderness Areas.		OW	Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CL,CLL)°C D.O. = 6.0 mg/l D.O. (sp)=7.0 mg/l pH = 6.5-9.0 E.Coli=126/100ml Chla=8 ug/l <sup>B</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=25 ug/l (tot) <sup>B</sup>	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
12. Lakes and reservoirs within Arapahoe National Recreation Area, including Grand Lake, Shadow Mountain Lake and Lake Granby.			Aq Life Cold 1 Recreation E Water Supply Agriculture DUWS*	T=TVS(CL,CLL)°C Shadow Mtn Res April-Dec T <sub>(WAT)</sub> =19.3°C <sup>D</sup> Lake Granby April-Dec T <sub>(WAT)</sub> =19.6°C <sup>D</sup> D.O. = 6.0 mg/l D.O. (sp)=7.0 mg/l pH = 6.5-9.0 E.Coli=126/100ml Chla=8 ug/l <sup>B,C</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=25 ug/l (tot) <sup>B,C</sup>	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	*DUWS Applies only to Grand Lake  See ** for narrative clarity standard.  July through September Grand Lake Clarity =4 meter secchi disk depth, effective January 1, 2017.
13. All lakes and reservoirs tributary to the Colorado River from the boundary of Rocky Mountain National Park and Arapahoe National Recreation Area to a point immediately below the confluence with the Roaring Fork River, except for specific listings in Upper Colorado Segments 11 and 12 and the Blue and Eagle River subbasins.			Aq Life Cold 1 Recreation E Water Supply Agriculture DUWS*	T=TVS(CL,CLL)°C Wolford Mtn Res April-Dec T <sub>(WAT)</sub> = 21.3°C <sup>D</sup> Williams Fork Res April-Dec T <sub>(WAT)</sub> =21.6°C <sup>D</sup> D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=8 ug/l <sup>B,C</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=25 ug/l (tot) <sup>B,C</sup>	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	*DUWS Applies only to Ute Creek Res

\*\*Narrative standard for Segment 12, Grand Lake: The highest level of clarity attainable, consistent with the exercise of established water rights, the protection of aquatic life, and protection of water quality throughout the Three Lakes system.

# STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS

REGION:12				NUMERIC STANDARDS					TEMPORARY MODIFICATIONS AND QUALIFIERS	
BASIN: Blue River		Desig	Classifications	PHYSICAL and BIOLOGICAL	INORGANIC mg/l		METALS ug/l			
Stream Segment Description										
1. Mainstem of the Blue River from the source to the confluence with French Gulch.			Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS Zn(ch)=TVS(sc)	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
2a. Mainstem of the Blue River from the confluence with French Gulch to a point one half mile below Summit County Road 3.		UP	Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup> °C	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot) °C	As(ac)=340 As(ch)=0.02(Trec) Cd(ac/ch)=4 CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=e <sup>(1.25</sup> (ln(hard)+0.799))	
2b. Mainstem of the Blue River from a point one half mile below Summit County Road 3 to the confluence with the Swan River.			Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS	As(ac)=340 As(ch)=0.02(Trec) Cd(ac/ch)=1/2e <sup>(1.0166(ln(hard)-3.132))</sup> CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=e <sup>(0.9805</sup> (ln(hard)+1.402))	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
2c. Mainstem of the Blue River from the confluence with the Swan River to Dillon Reservoir.			Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS Zn(ch)=TVS(sc)	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
3. Deleted.										
4a. All direct tributaries to Dillon Reservoir and all tributaries and wetlands in the Blue River drainage above Dillon Reservoir, except for specific listings in Segments 1, 2a, 2b, 4b, 5, 6, and 10-14.			Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS Zn(ch)=TVS(sc)	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
4b. North Fork of the Swan River, including all tributaries and wetlands, from the source to the confluence with the Swan River.		OW	Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS Zn(ch)=TVS(sc)	
5. Mainstem of Soda Creek from the source to Dillon Reservoir.			Aq Life Cold 1 Recreation E Agriculture Water Supply	T=TVS(CS-I)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	

## STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS

REGION:12		Desig	Classifications	NUMERIC STANDARDS						TEMPORARY MODIFICATIONS AND QUALIFIERS
BASIN: Blue River				PHYSICAL and BIOLOGICAL	INORGANIC mg/l		METALS ug/l			
Stream Segment Description										
6a. Mainstem of the Snake River, including all tributaries and wetlands from the source to Dillon Reservoir, except for specific listings in Segments 6b, 7, 8 and 9.		UP	Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup> c	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot) c	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
6b. Mainstem of Camp Creek, including all tributaries and wetlands from the source to confluence with the Snake River.			Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr)  zinc (acute) = 0.978e <sup>0.8537(ln Hardness)+1.5227</sup> zinc (chronic) = 0.986e <sup>0.8537(ln Hardness)+1.3519</sup>	
7. Mainstem of Peru Creek, including all tributaries and wetlands from the source to the confluence with the Snake River, except for specific listing in Segment 8.		UP	Aq Life Cold 1 Recreation N	T=TVS(CS-I)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=630/100ml	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 NO <sub>2</sub> =0.05 P=110 ug/l (tot)	As(ac)=340 As(ch)=7.6(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac/ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Hg(ch)=0.01(tot)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
8. Mainstem of Keystone Gulch, including all tributaries and wetlands from the source to the confluence with the Snake River. Mainstem of Chihuahua Creek including all tributaries, and wetlands from the source to the confluence with Peru Creek. Mainstem of the North Fork of the Snake River, including all tributaries and wetlands from the source to the confluence with the Snake River. Mainstem of Jones Gulch, including all tributaries and wetlands from the source to the confluence with the Snake River.			Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup> c	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot) c	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS Zn(ch)=TVS(sc)	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
9. Mainstem of Deer Creek, including all tributaries and wetlands from the source to the confluence with the Snake River.			Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
10. Mainstem of French Gulch including all tributaries and wetlands from the source to a point 1.5 miles below Lincoln.			Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
11. Mainstem of French Gulch from a point 1.5 miles below Lincoln to the confluence with the Blue River.		UP	Aq Life Cold 1 Recreation P Agriculture	T=TVS(CS-I)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=205/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =100 P=110 ug/l (tot)	As(ac)=340 As(ch)=7.6(Trec) Cd(ac/ch)=existing quality CrIII(ac/ch)=TVS CrIII(ch)=100(Trec) CrVI(ac/ch)=TVS Cu(ac)=TVS	Cu(ch)=TVS Fe(ch)=1000(Trec) Pb(ac/ch)=existing quality Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=existin g quality	

# STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS

REGION:12		Desig	Classifications	NUMERIC STANDARDS						TEMPORARY MODIFICATIONS AND QUALIFIERS
BASIN: Blue River				PHYSICAL and BIOLOGICAL	INORGANIC mg/l		METALS ug/l			
Stream Segment Description										
12.	Mainstem of Illinois Gulch and Fredonia Gulch from their source to their confluence with the Blue River.		Aq Life Cold 2 Recreation P Water Supply Agriculture	T=TVS(CS-I)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=205/100ml Chla=150 mg/m²	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
13.	Mainstem of Tenmile Creek from the Climax Parshall Flume to a point immediately above the confluence of West Tenmile Creek and all tributaries and wetlands from the source of Tenmile Creek to a point immediately above the confluence with West Tenmile Creek, except for the specific listing in Segment 15.		Aq Life Cold 1 Recreation P Agriculture	T=TVS(CS-I) °C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=205/100ml Chla=150 mg/m² <sup>c</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =100 P=110 ug/l (tot) <sup>c</sup>	As(ac)=340 As(ch)=7.6(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac/ch)=TVS CrIII(ch)=100(Trec) CrVI(ac/ch)=TVS	Cu(ac/ch)=TVS Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Hg(ch)=0.01(tot)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS Zn(ch)=TVS(sc)	Any water quality based effluent limit shall take into consideration the water quality standards of downstream waters and shall not cause or contribute to exceedances of water quality standards adopted to protect downstream uses.
14.	Mainstem of Tenmile Creek, including all tributaries and wetlands from a point immediately above the confluence with West Tenmile Creek to Dillon Reservoir, except for the specific listing in Segment 16.		Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m² <sup>c</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot) <sup>c</sup>	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=210(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS Zn(ch)=TVS(sc)	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.  Temporary modification: Mo(ch)=“current conditions” Expiration date of 12/31/16.
15.	Mainstem of Clinton Creek from the source to the confluence with Tenmile Creek.		Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m²	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=210(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
16.	All tributaries to the Blue River, including all wetlands, within the Eagles Nest and Ptarmigan Peak Wilderness Areas.	OW	Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m²	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
17.	Mainstem of the Blue River from the outlet of Dillon Reservoir to the confluence with the Colorado River.		Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS Zn(ch)=TVS(sc)	

## STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS

REGION:12		Desig	Classifications	NUMERIC STANDARDS						TEMPORARY MODIFICATIONS AND QUALIFIERS
BASIN: Blue River				PHYSICAL and BIOLOGICAL	INORGANIC mg/l		METALS ug/l			
Stream Segment Description										
18.	All tributaries to the Blue River, including all wetlands, from the outlet of Dillon Reservoir to the outlet of Green Mountain Reservoir, except for the specific listing in Segment 16.		Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I) °C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS Zn(ch)=TVS(sc)	
19.	All tributaries to the Blue River, including all wetlands, from the outlet of Green Mountain Reservoir to the confluence with the Colorado River, except for specific listings in Segment 20.		Aq Life Cold 1 Recreation N Water Supply Agriculture	T=TVS(CS-I)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=630/100ml	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
20.	Mainstems of Elliot Creek and Spruce Creek including all tributaries and wetlands, from their sources to the confluence with the Blue River.		Aq Life Cold 1 Recreation N Water Supply Agriculture	T=TVS(CS-I)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=630/100ml	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
21.	All lakes and reservoirs within the Eagles Nest and Ptarmigan Peak Wilderness Areas.	OW	Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CL,CLL)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=8 ug/l <sup>B</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=25 ug/l (tot) <sup>B</sup>	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
22.	Dillon Reservoir and all lakes and reservoirs in the Blue River drainage above Dillon Reservoir, except for specific listings in Segment 21.		Aq Life Cold 1 Recreation E Water Supply Agriculture DUWS*	T=TVS(CL,CLL)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=8 ug/l <sup>B,C</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=25 ug/l (tot) <sup>B,C</sup>	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	*DUWS Applies only to Goose Pasture Tarn  Special standards for Dillon Reservoir only: Total Phosphorus as P=0.0074 mg/l in the top 15 meters of the water column for the months of July, August, September & October. Additional total phosphorus or Chla standards adopted for this segment do not apply to Dillon Reservoir.  Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.

## STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS

REGION:12		Desig	Classifications	NUMERIC STANDARDS						TEMPORARY MODIFICATIONS AND QUALIFIERS
BASIN: <b>Blue River</b>				PHYSICAL and BIOLOGICAL	INORGANIC mg/l		METALS ug/l			
Stream Segment Description										
23.	All lakes and reservoirs in the Blue River drainage below Dillon Reservoir, except for specific listings in Segment 21.		Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CL,CLL)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=8 ug/l <sup>B,C</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=25 ug/l (tot) <sup>B,C</sup>	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	



## STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS

REGION:12		Desig	Classifications	NUMERIC STANDARDS						TEMPORARY MODIFICATIONS AND QUALIFIERS
BASIN: <b>Eagle River</b>				PHYSICAL and BIOLOGICAL	INORGANIC mg/l		METALS ug/l			
Stream Segment Description										
1.	All tributaries and wetlands to the Eagle River system within the Gore Range - Eagles Nest and Holy Cross Wilderness Area.	OW <sup>1</sup>	Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS Zn(ch)=TVS(sc)	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
<sup>1</sup> Consistent with the provisions of section 25-8-104 C.R.S. the OW designation shall not apply with respect to the Homestake Water Project of the Cities of Aurora and Colorado Springs.										
2.	Mainstem of the Eagle River from the source to the compressor house bridge at Belden.		Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l Ph=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup> c	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot) c	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS Zn(ch)=TVS(sc)	
3.	All tributaries to the Eagle River, including wetlands, from the source to the compressor house bridge at Belden, except for the specific listing in Segment 4 and those waters included in Segment 1.		Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS Zn(ch)=TVS(sc)	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
4.	Mainstem of Homestake Creek from the confluence of the East Fork to the confluence with the Eagle River.		Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS Zn(ch)=TVS(sc)	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
5a	Mainstem of the Eagle River from the compressor house bridge at Belden to a point immediately above the Highway 24 Bridge near Tigiwon Road.	9/30/00 Baseline does not apply	Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=(1.101672-[ln(hardness)]*(0.041838)))* e <sup>(0.7998 [ln(hardness)]-3.1725)</sup> CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac)=0.96*e <sup>0.9801[ln(hardness)] - 1.1073</sup> Cu(ch)=0.96*e <sup>0.5897[ln(hardness)] - 0.0053</sup>	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac) = 0.978*e <sup>0.8537[ln(hardness)]+2.1302</sup> Zn(ch) = 0.986*e <sup>0.8537[ln(hardness)]+1.9593</sup>	

## STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS

REGION:12		Desig	Classifications	NUMERIC STANDARDS					TEMPORARY MODIFICATIONS AND QUALIFIERS	
BASIN: <b>Eagle River</b>				PHYSICAL and BIOLOGICAL	INORGANIC mg/l	METALS ug/l				
Stream Segment Description										
5b.	Mainstem of the Eagle River from a point immediately above the Highway 24 Bridge near Tigiwon Road to a point immediately above the confluence with Martin Creek.	9/30/00 Baseline does not apply	Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I)*°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=(1.101672-[ln(hardness))*(0.04 1838)])* e <sup>(0.7998 ln(hardness))-3.1725</sup> CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac) = 0.96*e <sup>0.9801ln(hardness))-1.5865</sup> Cu(ch) = 0.96*e <sup>0.5897ln(hardness))-0.4845</sup>	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) <b>January 1 through April 30</b> Zn(ac) = 0.978*e <sup>0.8537ln(hardness))+2.1302</sup> Zn(ch) = 0.986*e <sup>0.8537ln(hardness))+1.9593</sup> <b>May 1 through December 31</b> Zn(ac) = 0.978*e <sup>0.8537ln(hardness))+1.4189</sup> Zn(ch) = 0.986*e <sup>0.8537ln(hardness))+1.2481</sup>	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
5c.	Mainstem of the Eagle River from a point immediately above Martin Creek to a point immediately above the confluence with Gore Creek.	9/30/00 Baseline does not apply	Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I)*°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=(1.101672-[ln(hardness))*(0.04 1838)])* e <sup>(0.7998 ln(hardness))-3.1725</sup> CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac) = 0.96*e <sup>0.9801ln(hardness))-1.5865</sup> Cu(ch) = 0.96*e <sup>0.5897ln(hardness))-0.4845</sup>	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac) = 0.978*e <sup>0.8537ln(hardness))+1.4189</sup> Zn(ch) = 0.986*e <sup>0.8537ln(hardness))+1.2481</sup>	
6.	All tributaries to the Eagle River, including all wetlands, from the compressor house bridge at Belden to a point immediately below the confluence with Lake Creek, except for the specific listings in Segments 1, 7a, 7b, and 8.		Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I)*°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS Zn(ch)=TVS(sc)	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
7a.	Mainstem of Cross Creek from the source to a point immediately below the Minturn Middle School, except for those waters included in Segment 1.		Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I)*°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ch)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS Zn(ch)=TVS(sc)	
7b.	Mainstem of Cross Creek from a point immediately below the Minturn Middle School to the confluence with the Eagle River, except for those waters included in Segment 1.	9/30/00 Baseline does not apply	Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I)*°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=(1.101672-[ln(hardness))*(0.04 1838)])* e <sup>(0.7998 ln(hardness))-3.1725</sup> CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac) = 0.96*e <sup>0.9801ln(hardness))-1.5865</sup> Cu(ch) = 0.96*e <sup>0.5897ln(hardness))-0.4845</sup>	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) <b>January 1 through April 30</b> Zn(ac) = 0.978*e <sup>0.8537ln(hardness))+2.1302</sup> Zn(ch) = 0.986*e <sup>0.8537ln(hardness))+1.9593</sup> <b>May 1 through December 31</b> Zn(ac) = 0.978*e <sup>0.8537ln(hardness))+1.4189</sup> Zn(ch) = 0.986*e <sup>0.8537ln(hardness))+1.2481</sup>	

## STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS

REGION:12		Desig	Classifications	NUMERIC STANDARDS					TEMPORARY MODIFICATIONS AND QUALIFIERS	
BASIN: <b>Eagle River</b>				PHYSICAL and BIOLOGICAL	INORGANIC mg/l		METALS ug/l			
Stream Segment Description										
8.	Mainstem of Gore Creek from the confluence with Black Gore Creek to the confluence with the Eagle River.		Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I) °C Jun 1 - Jun 30 T <sub>(MWAT)</sub> = 14°C Oct 1 - Oct 15 T <sub>(MWAT)</sub> = 12°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup> c	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot) c	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS Zn(ch)=TVS(sc)	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
9a.	Mainstem of the Eagle River from Gore Creek to a point immediately below the confluence with Squaw Creek.		Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I) °C Jun 1 - Jun 30 T <sub>(MWAT)</sub> = 16°C Oct 1 - Oct 15 T <sub>(MWAT)</sub> = 12°C Oct 16 - Oct 31 T <sub>(MWAT)</sub> = 11°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
9b.	Mainstem of the Eagle River from a point immediately below the confluence with Squaw Creek to a point immediately below the confluence with Rube Creek.		Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-II) °C Apr 1 - May 31 T <sub>(MWAT)</sub> = 12°C T <sub>(DM)</sub> = 15°C Oct 1 - Oct 15 T <sub>(MWAT)</sub> = 12°C T <sub>(DM)</sub> = 15°C Oct 16 - Oct 31 T <sub>(MWAT)</sub> = 11°C T <sub>(DM)</sub> = 15°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
9c.	Mainstem of the Eagle River from a point immediately below the confluence with Rube Creek to the confluence with the Colorado River.		Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-II)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
10a.	All tributaries to the Eagle River, including all wetlands, from a point immediately below the confluence with Lake Creek to the confluence with the Colorado River, except for specific listings in Segments 10b, 11 and 12, and those waters included in Segment 1.		Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
10b.	Abrams Creek, including all tributaries and wetlands, from the source to the eastern boundary of the United States Bureau of Land Management lands.	OW	Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.

## STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS

REGION:12		Desig	Classifications	NUMERIC STANDARDS						TEMPORARY MODIFICATIONS AND QUALIFIERS
BASIN: <b>Eagle River</b>				PHYSICAL and BIOLOGICAL	INORGANIC mg/l		METALS ug/l			
Stream Segment Description										
11.	Mainstem of Alkali Creek from the source to the confluence with the Eagle River. Mainstem of Milk Creek from the source to the confluence with the Eagle River.		Aq Life Cold 2 Recreation P Agriculture	T=TVS(CS-I) <sup>o</sup> C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=205/100ml Chla=150 mg/m <sup>2</sup>	CN(ac)=0.2	B=0.75 Cl=250 NO <sub>2</sub> =10 NO <sub>3</sub> =100 P=110 ug/l (tot)	As(ac)=340 As(ch)=100(Trec) Be(ch)=100(Trec) Cd(ch)=10(Trec) CrIII(ch)=100(Trec)	CrVI(ch)=100(Trec) Cu(ch)=200(Trec) Pb(ch)=100(Trec) Mn(ch)=200(Trec) Mo(ch)=160(Trec)	Ni(ch)=200(Trec) Se(ac/ch)=TVS Zn(ch)=2000(Trec)	
12.	Mainstem of Brush Creek, from the source to the confluence with the Eagle River, including the East and West Forks.		Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I) <sup>o</sup> C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
13.	All lakes and reservoirs within the Gore Range - Eagles Nest and Holy Cross Wilderness Areas.	OW	Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CL,CLL) <sup>o</sup> C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=8 ug/l <sup>B</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=25 ug/l (tot) <sup>B</sup>	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
14.	All lakes and reservoirs tributary to the Eagle River except for specific listings in Segment 13.		Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CL,CLL) <sup>o</sup> C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=8 ug/l <sup>B</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=25 ug/l (tot) <sup>B</sup>	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	

# STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS

REGION:12				NUMERIC STANDARDS					TEMPORARY MODIFICATIONS AND QUALIFIERS	
BASIN: <b>Roaring Fork River</b>		Desig	Classifications	PHYSICAL and BIOLOGICAL	INORGANIC mg/l		METALS ug/l			
Stream Segment Description										
1.	All tributaries to the Roaring Fork River system, including all wetlands, within the Maroon Bells/Snowmass, Holy Cross, Raggeds, Collegiate Peaks and Hunter/Fryingpan Wilderness Areas.	OW	Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m²	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
2.	Mainstem of the Roaring Fork River, including all tributaries and wetlands, from the source to a point immediately below the confluence with Hunter Creek, except for those tributaries included in Segment 1.		Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m²	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS Zn(ch)=TVS(sc)	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
3a.	Mainstem of the Roaring Fork River, from a point immediately below the confluence with Hunter Creek, to a point immediately below the confluence with the Fryingpan River. All tributaries to the Roaring Fork River, including wetlands, from a point immediately below the confluence with Hunter Creek to the confluence with the Colorado River, except for those tributaries included in Segment 1 and specific listings in Segments 3b-10.		Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m² c	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot) c	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
3b.	Mainstem of Red Canyon and all tributaries and wetlands from the source to the confluence with the Roaring Fork River, except for Landis Creek from its source to the Hopkins Ditch Diversion.		Aq Life Cold 2 Recreation N Water Supply Agriculture	T=TVS(CS-II)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02-10(Trec) <sup>a</sup> Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
3c.	Mainstem of the Roaring Fork River, from a point immediately below the confluence with the Fryingpan River, to the confluence with the Colorado River. Mainstem of Three Mile Creek, including all tributaries and wetlands, from the source to the confluence with the Roaring Fork River.		Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-II)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m² c	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot) c	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
3d.	Mainstem of Cattle Creek, including all tributaries and wetlands, from the source to the most downstream White River National Forest boundary.	OW	Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m²	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	

# STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS

REGION:12		Desig	Classifications	NUMERIC STANDARDS						TEMPORARY MODIFICATIONS AND QUALIFIERS
BASIN: Roaring Fork River				PHYSICAL and BIOLOGICAL	INORGANIC mg/l	METALS ug/l				
Stream Segment Description										
4.	Mainstem of Brush Creek from the source to the confluence with the Roaring Fork River.		Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I) <sup>o</sup> C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup> °C	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot) °C	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
5.	Mainstem of the Fryingpan River from the source to the confluence with the North Fork.		Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I) <sup>o</sup> C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS Zn(ch)=TVS(sc)	
6.	Mainstem of the Fryingpan River from the confluence with the North Fork to the confluence with the Roaring Fork River.		Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I) <sup>o</sup> C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS Zn(ch)=TVS(sc)	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
7.	All tributaries to the Fryingpan River, including all wetlands, except for those tributaries included in Segment 1.		Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I) <sup>o</sup> C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS Zn(ch)=TVS(sc)	
8.	Mainstem of the Crystal River, including all tributaries and wetlands, from the source to the confluence with the Roaring Fork River, except for specific listings in Segments 1, 9 and 10.		Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I) <sup>o</sup> C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup> °C	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot) °C	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
9.	Mainstem of Coal Creek including all tributaries and wetlands from the source to the confluence with the Crystal River.		Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I) <sup>o</sup> C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
10a.	Mainstem of Thompson Creek, including all tributaries and wetlands, from the source to the confluence with the Crystal River, except for specific listings in Segment 10b.		Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I) <sup>o</sup> C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS Zn(ch)=TVS(sc)	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.

## STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS

REGION:12		Desig	Classifications	NUMERIC STANDARDS						TEMPORARY MODIFICATIONS AND QUALIFIERS
BASIN: <b>Roaring Fork River</b>				PHYSICAL and BIOLOGICAL	INORGANIC mg/l	METALS ug/l				
Stream Segment Description										
10b.	Mainstem of North Thompson Creek, including all tributaries and wetlands, from the source to the White River National Forest boundary. Mainstem of Middle Thompson Creek, including all tributaries and wetlands, from the source to a point immediately below the confluence with the South Branch of Middle Thompson Creek.	OW	Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m²	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS Zn(ch)=TVS(sc)	
11.	All lakes and reservoirs within the Maroon Bells/Snowmass, Holy Cross, Raggeds, Collegiate Peaks and Hunter/Fryingpan Wilderness Areas.	OW	Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CL,CLL)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=8 ug/l <sup>B</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=25 ug/l (tot) <sup>B</sup>	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
12.	All lakes and reservoirs tributary to the Roaring Fork River except for specific listings in Segment 11.		Aq Life Cold 1 Recreation E Water Supply Agriculture DUWS*	T=TVS(CL,CLL)°C Ruedi Res April-Dec T <sub>(WAT)</sub> =20.3°C <sup>D</sup> D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=8 ug/l <sup>B</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=25 ug/l (tot) <sup>B</sup>	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	*DUWS Applies only to Leonard Thomas Res and Wildcat Res

## STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS

REGION:12		Desig	Classifications	NUMERIC STANDARDS					TEMPORARY MODIFICATIONS AND QUALIFIERS	
BASIN: North Platte River				PHYSICAL and BIOLOGICAL	INORGANIC mg/l		METALS ug/l			
Stream Segment Description										
1.	All tributaries to the North Platte and Encampment Rivers, including all wetlands, within the Mount Zirkel, Never Summer, and Platte River Wilderness Areas.	OW	Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
2.	Mainstem of the Encampment River, including all tributaries and wetlands, from the source to the Colorado/Wyoming border, except for those tributaries included in Segment 1.		Aq Life Cold 1 Recreation P Water Supply Agriculture	T=TVS(CS-I)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=205/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
3.	Mainstem of the North Platte River from the confluence of Grizzly Creek and Little Grizzly Creek to the Colorado/Wyoming border.		Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-II)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup> <sup>c</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot) <sup>c</sup>	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
4a.	All tributaries to the North Platte River system, including all wetlands, except for those tributaries included in Segment 1, and specific listings in Segments 4b, 6, 7a and 7b.		Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Mn(ch)=WS(dis) Mn(ac/ch)=TVS Pb(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
4b.	Mainstem of the Illinois River, including all tributaries and wetlands, from a point immediately below the confluence with Indian Creek to the confluence with the Michigan River except for specific listings in Segments 7a and 7b. Mainstem of the Canadian River below 12E Road to the confluence with the North Platte River. All tributaries which enter the mainstem of the Canadian River from the southwest side of the mainstem.		Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-II)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Mn(ch)=WS(dis) Mn(ac/ch)=TVS Pb(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
5a.	Mainstem of the Michigan River from the source to a point immediately below the confluence with the North Fork Michigan River.		Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS	Cu(ac/ch)=TVS Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Mn(ch)=WS(dis) Mn(ac/ch)=TVS Pb(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
5b.	Mainstem of the Michigan River from a point immediately below the confluence with the North Fork Michigan River to the confluence with the North Platte River.		Aq Life Cold 1 Recreation N Water Supply Agriculture	T=TVS(CS-II)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=630/100ml	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot) <sup>c</sup>	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS	Cu(ac/ch)=TVS Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Mn(ch)=WS(dis) Mn(ac/ch)=TVS Pb(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.



## STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS

REGION:12		Desig	Classifications	NUMERIC STANDARDS						TEMPORARY MODIFICATIONS AND QUALIFIERS
BASIN: North Platte River				PHYSICAL and BIOLOGICAL	INORGANIC mg/l		METALS ug/l			
Stream Segment Description										
6.	Mainstem of Pinkham Creek from the Routt National Forest boundary to the confluence with the North Platte River.		Aq Life Cold 1 Recreation N Water Supply Agriculture	T=TVS(CS-I)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=630/100ml	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)= 0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS	Cu(ac/ch)=TVS Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
7a.	Mainstem of Government Creek from the boundary of the Colorado State Forest to the confluence with the Canadian River. Mainstem of Spring Creek from the source to the outlet of Spring Creek (Number 31) Reservoir.		Aq Life Cold 2 Recreation N Agriculture	T=TVS(CS-I)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=630/100ml	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =100 P=110 ug/l (tot)	As(ac)=340 As(ch)=7.6(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac/ch)=TVS CrIII(ch)=100(Trec) CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec) Ni(ac/ch)=TVS	Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	Fish Ingestion
7b.	Mainstem of Spring Creek from the outlet of Spring Creek (Number 31) Reservoir to the confluence with the Illinois River.		Aq Life Cold 2 Recreation N Agriculture	T=TVS(CS-II)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=630/100ml	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =100 P=110 ug/l (tot)	As(ac)=340 As(ch)=7.6(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac/ch)=TVS CrIII(ch)=100(Trec) CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec) Ni(ac/ch)=TVS	Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	Fish Ingestion
8.	All lakes and reservoirs within the Mount Zirkel, Never Summer, and Platte River Wilderness Areas.	OW	Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CL,CLL)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=8 ug/l <sup>B</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=25 ug/l (tot) <sup>B</sup>	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
9.	All lakes and reservoirs tributary to the North Platte and Encampment Rivers except for specific listings in Segment 8.		Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CL,CLL)°C Lake John April-Dec T <sub>(WAT)</sub> =1.2°C North Delaney Lake April-Dec T <sub>(WAT)</sub> =20.1°C South Delaney Lake April-Dec T <sub>(WAT)</sub> =18.8°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=8 ug/l <sup>B</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=25 ug/l (tot) <sup>B</sup>	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	

# STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS

REGION:12		Desig	Classifications	NUMERIC STANDARDS						TEMPORARY MODIFICATIONS AND QUALIFIERS
BASIN: Yampa River				PHYSICAL and BIOLOGICAL	INORGANIC mg/l		METALS ug/l			
Stream Segment Description										
1.	All tributaries to the Yampa River, including all wetlands, which are within the Mount Zirkel, Flat Tops and Sarvis Creek Wilderness Areas.	OW	Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS Zn(ch)=TVS(sc)	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
2a.	Mainstem of the Yampa River from the confluence with Wheeler Creek to a point immediately above the confluence with Oak Creek.		Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup> c	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot) c	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS Zn(ch)=TVS(sc)	
2b.	Mainstem of the Yampa River from a point immediately above the confluence with Oak Creek to a point immediately below the confluence with Elkhead Creek.		Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-II)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS Zn(ch)=TVS(sc)	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
3.	All tributaries to the Yampa River, including all wetlands, from the source to the confluence with Elk River, except for specific listings in Segments 4-8, 13a-f and 19. Mainstem of the Bear River, including all tributaries and wetlands from the boundary of the Flat Tops Wilderness Area to the confluence with the Yampa River.		Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup> c	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot) c	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS Zn(ch)=TVS(sc)	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
4.	Mainstem of Little White Snake Creek from the source to the confluence with the Yampa River.		Aq Life Cold 2 Recreation N Water Supply Agriculture	T=TVS(CS-II)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=630/100ml	CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340(dis) As(ch)=0.02-10(Trec) <sup>a</sup> Cd(ac)=5 CrIII(ac)=50 CrVI(ac)=50 Cu(ch)=200	Fe(ch)=WS(dis) Pb(ac)=50 Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ac)=2.0 Mo(ch)=160	Ni(ch)=100 Se(ch)=20 Ag(ac)=100 Zn(ac/ch)=2000	All metals are Trec unless otherwise noted.
5.	Mainstem of Chimney Creek, including all tributaries and wetlands, which are not on National Forest lands, from the source to the confluence with the Yampa River.		Aq Life Cold 1 Recreation P Agriculture	T=TVS(CS-I)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=205/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =100 P=110 ug/l (tot)	As(ac)=340 As(ch)=7.6(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac/ch)=TVS CrIII(ch)=100(Trec) CrVI(ac/ch)=TVS	Cu(ac/ch)=TVS Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
6.	Mainstem of Oak Creek, including all tributaries and wetlands, from the source to a point 0.25 mile below County Road 27.		Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.

## STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS

REGION:12				NUMERIC STANDARDS					TEMPORARY MODIFICATIONS AND QUALIFIERS	
BASIN: Yampa River		Desig	Classifications							
Stream Segment Description				PHYSICAL and BIOLOGICAL	INORGANIC mg/l		METALS ug/l			
7.	Mainstem of Oak Creek, including all tributaries and wetlands, from a point 0.25 mile below County Road 27 to the confluence with the Yampa River.		Aq Life Cold 1 Recreation P Water Supply Agriculture	T=TVS(CS-II)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=205/100ml Chla=150 mg/m <sup>2</sup> °C	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot) °C	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS	Cu(ac/ch)=TVS Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
8.	Mainstem of the Elk River including, all tributaries and wetlands, from the source to the confluence with the Yampa River, except for those tributaries included in Segments 1, 20a and 20b.		Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup> °C	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot) °C	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS Zn(ch)=TVS(sc)	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
9.	Deleted.									
10.	Deleted.									
11.	Fish Creek, including all tributaries and wetlands, from the source to County Road 27, except for specific listings in Segment 20.		Aq Life Cold 2 Recreation N Agriculture	T=TVS(CS-I)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=630/100ml	CN(ac)=0.2	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =100 P=110 ug/l (tot)	As(ac)=340(dis) As(ch)=100 Cd(ch)=10 CrIII(ch)=100 CrVI(ch)=100 Cu(ac)=200	Pb(ch)=100 Mn(ch)=200 Mo(ch)=160 Ni(ch)=200	Se(ch)=20 Zn(ch)=2000	All metals are Trec unless otherwise noted.
12.	All tributaries to the Yampa River, including all wetlands, from the confluence with the Elk River to the confluence with Elkhead Creek, which are not on National Forest lands, except for specific listings in Segments 11 and 13a-fj.		Aq Life Cold 2 Recreation N Agriculture	T=TVS(CS-II)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=630/100ml	CN(ac)=0.2	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =100 P=110 ug/l (tot)	As(ac)=340(dis) As(ch)=100 Cd(ch)=10 CrIII(ch)=100 CrVI(ch)=100 Cu(ac)=200	Pb(ch)=100 Mn(ch)=200 Mo(ch)=160 Ni(ch)=200	Se(ch)=20 Zn(ch)=2000	All metals are Trec unless otherwise noted.
13a.	Mainstem of Trout Creek, including all tributaries and wetlands, from the source to the confluence with the Yampa River, which are not on National Forest lands, except for specific listings in Segments 13b, 13c, 13f, and 13g.		Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS Zn(ch)=TVS(sc)	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
13b.	Mainstem of Foidel Creek, including all tributaries and wetlands. Mainstem Fish Creek, including all tributaries from County Road 27 downstream to the confluence with Trout Creek, except for specific listings in Segment 13g. Middle Creek and all tributaries, from County Road 27 downstream to the confluence with Trout Creek.		Aq Life Warm 1 Recreation E Agriculture	T=TVS(WS-II)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =100 P=110 ug/l (tot)	As(ac)=340 As(ch)=7.6(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac/ch)=TVS CrIII(ch)=100(Trec) CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=1000(Trec) Middle Creek Mar-Jun Fe(ch)=2090(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	See section 33.6(4) for iron assessment locations.  Temporary modification:, Se(ch): "current conditions" for Foidel and Middle Creeks. Expiration date of 12/31/18.
13c.	Mainstem of Trout Creek from the headgate of Spruce Hill Ditch (approximately 2,500 feet north of where County Road 27 crosses Trout Creek) to its confluence with Fish Creek. All tributaries to Trout Creek from the headgate of Spruce Hill Ditch (approximately 2,500 feet north of where County Road 27 crosses Trout Creek) to County Road 179 except for specific listings in 13b.		Aq Life Cold 1 Recreation E Agriculture  June through February Water Supply	T=TVS(CS-II)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =100 P=110 ug/l (tot)  June through February NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS	As(ac)=340 As(ch)=7.6(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac/ch)=TVS CrIII(ch)=100(Trec) CrVI(ac/ch)=TVS Cu(ac/ch)=TVS  June through February As(ch)=0.02(Trec) CrIII(ac)=50(Trec) CrIII(ch)=TVS	Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)  June through February Fe(ch)=WS(dis) Mn(ch)=WS(dis)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	Temporary modification: June through February As(ch)=hybrid Expiration date of 12/31/21.

## STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS

REGION:12		Desig	Classifications	NUMERIC STANDARDS					TEMPORARY MODIFICATIONS AND QUALIFIERS	
BASIN: Yampa River				PHYSICAL and BIOLOGICAL	INORGANIC mg/l		METALS ug/l			
Stream Segment Description										
13d. Mainstem of Dry Creek, including all tributaries and wetlands, from the source to just above the confluence with Temple Gulch.		UP	Aq Life Warm 2 Recreation E Agriculture	T=TVS(WS-II)°C D.O.=5.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m²	NH <sub>3</sub> (ac/ch)=TV S Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =100 P=170 ug/l (tot)	As(ac)=340 As(ch)= 100(Trec) Cd(ac/ch)=TVS CrIII(ac/ch)=TVS CrIII(ch)=100(Trec) CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Mar-Apr Fe(ch)=3040(Trec) May-Feb Fe(ch)=1110(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac/ch)=TVS Zn(ac/ch)=TVS	See section 33.6(4) for iron assessment locations.  Temporary modifications: Fe(ch): Mar-Apr "current condition" Expiration date of 12/31/16. Se(ch): "current conditions" Expiration date of 12/31/18.
13e. Mainstem of Sage Creek, including all tributaries and wetlands, from its sources to the confluence with the Yampa River.		UP	Aq Life Warm 2 Recreation N Agriculture	T=TVS(WS-II)°C D.O.=5.0 mg/l pH=6.5-9.0 E.Coli=630/100ml	NH <sub>3</sub> (ac/ch)=TV S Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =100 P=170 ug/l (tot)	As(ac)=340 As(ch)=1250(Trec) Cd(ac/ch)=TVS CrIII(ac/ch)=TVS CrIII(ch)=100(Trec) CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Upper Sage Creek Fe(ch)=1250(Trec) Lower Sage Creek Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac/ch)=TVS Zn(ac/ch)=TVS	Break between Upper and Lower Sage Creek is the west border of Section 18, T5N, R87W.  See section 33.6(4) for iron assessment locations.  Temporary modification: Se(ch): "current conditions" Expiration date of 12/31/18.
13f. Mainstem of Trout Creek, including all tributaries and wetlands, from a point immediately below its confluence with Fish Creek to the confluence with the Yampa River.			Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-II)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m²	NH <sub>3</sub> (ac/ch)=TV S Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
13g. All tributaries to Fish Creek from the confluence with Cow Camp Creek to the confluence with Trout Creek,			Aq Life Warm 1 Recreation E Agriculture	T=TVS(WS-II)°C D.O.=5.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m²	NH3(ac/ch)=TV S Cl2(ac)=0.019 Cl2(ch)=0.011 CN=0.005	S=0.002 B=0.75 NO2=0.05 NO3=100 P=170 ug/l (tot)	As(ac)=340 As(ch)=7.6(Trec) Cd(ac)=TVS(Tr) Cd(ch)=TVS CrIII(ac/ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec) Ni(ac/ch)=TVS	Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(Tr) Zn(ac/ch)=TVS	Temporary modification: Se(ch): "current conditions" Expiration date of 12/31/18
13h. Mainstem of Dry Creek, including all tributaries and wetlands, from the confluence with Temple Gulch to the confluence with the Yampa River near Hayden.		UP	Aq Life Warm 2 Recreation E Agriculture	T=TVS(WS-II)°C D.O.=5.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m²	NH3(ac/ch)=TV S Cl2(ac)=0.019 Cl2(ch)=0.011 CN=0.005	S=0.002 B=0.75 NO2=0.05 NO3=100 P=170 ug/l (tot)	As(ac)=340 As(ch)=7.6(Trec) Cd(ac)=TVS(Trec) Cd(ch)=TVS CrIII(ac/ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec) Ni(ac/ch)=TVS	Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(Trec) Zn(ac/ch)=TVS	See section 33.6(4) for iron assessment locations.

## STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS

REGION:12		Desig	Classifications	NUMERIC STANDARDS						TEMPORARY MODIFICATIONS AND QUALIFIERS
BASIN: <b>Yampa River</b>				PHYSICAL and BIOLOGICAL	INORGANIC mg/l		METALS ug/l			
Stream Segment Description										
13i.	Mainstem of Grassy Creek, including all tributaries and wetlands, from the source to immediately above the confluence with Scotchmans Gulch.	UP	Aq Life Warm 2 Recreation N Agriculture	T=TVS(WS-II)°C D.O.=5.0 mg/l pH=6.5-9.0 E.Coli=630/100ml	NH3(ac/ch)=TVS Cl2(ac)=0.019 Cl2(ch)=0.011 CN=0.005	S=0.002 B=0.75 NO2=0.05 NO3=100 P=170 ug/l (tot)	As(ac)=340 As(ch)=100( Trec) Cd(ac/ch)=TVS CrIII(ac/ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec) Ni(ac/ch)=TVS	Se(ac/ch)=TVS Ag(ac/ch)=TVS Zn(ac/ch)=TVS	Temporary modification. Fe(ch): "current conditions" for Grassy Creek. Expiration date of 12/31/16.  Temporary modification: Se(ch): "current conditions" Expiration date of 12/31/18.  See section 33.6(4) for iron assessment locations.
13j.	Mainstem of Grassy Creek, including all tributaries and wetlands, from the confluence with Scotchmans Gulch to the confluence with the Yampa River near Hayden.	UP	Aq Life Warm 2 Recreation N Agriculture	T=TVS(WS-II)°C D.O.=5.0 mg/l pH=6.5-9.0 E.Coli=630/100ml	NH3(ac/ch)=TVS Cl2(ac)=0.019 Cl2(ch)=0.011 CN=0.005	S=0.002 B=0.75 NO2=0.05 NO3=100 P=170 ug/l (tot)	As(ac)=340 As(ch)=100( Trec) Cd(ac/ch)=TVS CrIII(ac/ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec) Ni(ac/ch)=TVS	Mar-Jun Se(ac/ch)=TVS Ag(ac/ch)=TVS Zn(ac/ch)=TVS	See section 33.6(4) for selenium assessment locations.
14.	Mainstem of Elkhead Creek, including all tributaries and wetlands, from the boundary of the National Forest lands, to a point immediately below the confluence with Calf Creek. Dry Fork of Elkhead Creek, including all tributaries and wetlands, from the source to a point immediately below 80A Road.		Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-II)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m²	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
15.	Mainstem of Elkhead Creek, including all tributaries and wetlands, from a point immediately below the confluence with Calf Creek to the confluence with the Yampa River. Dry Fork of Elkhead Creek, including all tributaries and wetlands, from a point immediately below 80A Road to the confluence with the Yampa River.		Aq Life Warm 1 Recreation E Water Supply Agriculture	T=TVS(WS-II)°C D.O.=5.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m²	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=170 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
16.	Deleted									
17.	Deleted.									
18.	Mainstem of the Little Snake River, including all tributaries and wetlands, from the Routt National Forest boundary to the Colorado/Wyoming border.		Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m²	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS Zn(ch)=TVS(sc)	
19.	All tributaries to the Little Snake River, including all wetlands, which are on National Forest lands in Routt County.		Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I)°C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m²	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ua/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch) Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS Zn(ch)=TVS(sc)	

## STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS

REGION:12		Desig	Classifications	NUMERIC STANDARDS						TEMPORARY MODIFICATIONS AND QUALIFIERS
BASIN: Yampa River				PHYSICAL and BIOLOGICAL	INORGANIC mg/l		METALS ug/l			
Stream Segment Description										
20a.	All tributaries to the Yampa River, including wetlands, above the confluence with Elkhead Creek that are within National Forest boundaries, except for specific listings in segment 20b.		Aq Life Cold 1 Recreation U Water Supply Agriculture	T=TVS(CS-I) <sup>a</sup> C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
20b.	Mainstem of First Creek from the eastern boundary of state lands in California Park to the confluence with Elkhead Creek. Mainstem of Elkhead Creek from the eastern boundary of state lands in California Park to the National Forest boundary.		Aq Life Cold 1 Recreation N Water Supply Agriculture	T=TVS(CS-I) <sup>a</sup> C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=630/100ml	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
21.	All lakes and reservoirs which are within the Mount Zirkel, Flat Tops and Sarvis Creek Wilderness Areas.	OW	Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CL,CLL) <sup>a</sup> C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=8 ug/l <sup>B</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=25 ug/l (tot) <sup>B</sup>	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
22.	All lakes and reservoirs tributary to the Yampa River from the source to the confluence with Elkhead Creek, except for those listed in Segment 21. All lakes and reservoirs tributary to Elkhead Creek from the source to the confluence with the Yampa River, except for specific listings in Segment 23. All lakes and reservoirs tributary to the Little Snake River, including those on National Forest lands.		Aq Life Cold 1 Recreation E Water Supply Agriculture DUWS*	T=TVS(CL,CLL) <sup>a</sup> C Pearl Lake April-Dec T <sub>(WAT)</sub> =19.6 <sup>a</sup> C <sup>D</sup> Stagecoach Res April-Dec T <sub>(WAT)</sub> =21.7 <sup>a</sup> C <sup>D</sup> Steamboat Lake April-Dec T <sub>(WAT)</sub> =21.6 <sup>a</sup> C <sup>D</sup> D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=8 ug/l <sup>B,C</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=25 ug/l (tot) <sup>B,C</sup>	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	*DUWS Applies only to Stagecoach Res. Steamboat Lake and Yampa River Holding Pond
23.	Elkhead Reservoir		Aq Life Warm 1 Recreation E Water Supply Agriculture	T=TVS(WL) <sup>a</sup> C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=8 ug/l <sup>B,C</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=25 ug/l (tot) <sup>B,C</sup>	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	

## **STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS**

### **STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS – FOOTNOTES**

- (A) Whenever a range of standards is listed and referenced to this footnote, the first number in the range is a strictly health-based value, based on the Commission's established methodology for human health-based standards. The second number in the range is a maximum contaminant level, established under the federal Safe Drinking Water Act that has been determined to be an acceptable level of this chemical in public water supplies, taking treatability and laboratory detection limits into account. Control requirements, such as discharge permit effluent limitations, shall be established using the first number in the range as the ambient water quality target, provided that no effluent limitation shall require an "end-of-pipe" discharge level more restrictive than the second number in the range. Water bodies will be considered in attainment of this standard, and not included on the Section 303(d) List, so long as the existing ambient quality does not exceed the second number in the range.
- (B) Total phosphorus (TP) and chlorophyll a standards apply only to lakes and reservoirs larger than 25 acres surface area.
- (C) Total phosphorus and chlorophyll a standards apply only above the facilities listed at 33.5(4).
- (D) Assessment of adequate refuge shall rely on the Cold Large Lake table value temperature criterion and applicable dissolved oxygen standard rather than the site-specific temperature standard.

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**State of Colorado  
Department of Law**

**Office of the Attorney General**

Tracking number: 2014-00093

**Opinion of the Attorney General rendered in connection with the rules adopted by the  
Water Quality Control Commission (1002 Series)**

**on 08/11/2014**

**5 CCR 1002-33**

**REGULATION NO. 33 - CLASSIFICATIONS AND NUMERIC STANDARDS FOR UPPER  
COLORADO RIVER BASIN AND NORTH PLATTE RIVER (PLANNING REGION 12)**

The above-referenced rules were submitted to this office on 08/12/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

August 20, 2014 16:09:45

A handwritten signature in black ink, appearing to read "JWS", is written over a light blue rectangular background.

**John W. Suthers**

Attorney General

by Daniel D. Domenico

Solicitor General



## **Permanent Rules Adopted**

### **Department**

Department of Public Health and Environment

### **Agency**

Water Quality Control Commission (1002 Series)

### **CCR number**

5 CCR 1002-34

### **Rule title**

5 CCR 1002-34 REGULATION NO. 34 - CLASSIFICATIONS AND NUMERIC  
STANDARDS FOR SAN JUAN AND DOLORES RIVER BASINS 1 - eff 03/01/2015

### **Effective date**

03/01/2015

# COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

## WATER QUALITY CONTROL COMMISSION

5 CCR 1002-34

### REGULATION NO. 34 CLASSIFICATIONS AND NUMERIC STANDARDS FOR SAN JUAN AND DOLORES RIVER BASINS

#### .... 34.6 TABLES

....

#### STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS

REGION: 9  BASIN: ANIMAS AND FLORIDA RIVER	Desig	Classifications	NUMERIC STANDARDS							TEMPORARY MODIFICATIONS AND QUALIFIERS
			PHYSICAL and BIOLOGICAL	INORGANIC		METALS				
	Stream Segment Description			mg/l		ug/l				
13b. All tributaries to the Animas River from a point immediately below the confluence with Hermosa Creek to the Southern Ute Indian Reservation boundary except for the specific listings in Segments 12d, 13a, 14a and 14b; all tributaries to the Florida River, from a point immediately below the confluence with Mud Creek to the Southern Ute Indian Reservation boundary, except for specific listings in Segment 12d.		Aq Life Cold 2 Recreation E Water Supply Agriculture	T=TVS(CS-I) °C D.O.= 6.0 mg/l D.O.(sp)=7.0 mg/l pH = 6.5-9.0 E.Coli=126/100ml	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Mn(ch)=WS(dis) Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	Water + Fish Standards  Discharger Specific Variance <sup>(2)</sup> NH <sub>3</sub> (ac/ch)=TVS:15 mg/l Expiration date 12/31/2024  Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.	

(2) Discharger Specific Variance, Durango West Metro Dist.#2 (COG589115): The first number is the underlying standard previously adopted by the Commission for the segment and represents the long-term goal for the waterbody. The first number will be used for assessing attainment for the waterbody and for the development of effluent limitations. The second number is the Commission's determination of the effluent concentration with the highest degree of protection of the classified use that is feasible for Durango West Metro District. Control requirements, such as discharge permit effluent limitations, shall be established using the first number as the ambient water quality target, provided that no effluent limitation shall require an "end-of-pipe" discharge level more restrictive than the second number during the term of the DSV for the named dischargers.

....

**34.43 STATEMENT OF BASIS SPECIFIC STATUTORY AUTHORITY AND PURPOSE AUGUST 11, 2014 RULEMAKING HEARING; FINAL ACTION AUGUST 11, 2014; EFFECTIVE DATE MARCH 1, 2015**

The provisions of C.R.S. 25-8-202(1)(a), (b) and (2); 25-8-203; 25-8-204; and 25-8-402; provide the specific statutory authority for adoption of these regulatory amendments. The Commission also adopted in compliance with 24-4-103(4) C.R.S. the following statement of basis and purpose.

**BASIS AND PURPOSE**

In 2010, the Commission adopted the discharger specific variance provisions at Regulation 31.7(4), which allow a temporary water quality standard to be adopted in cases where water quality based effluent limits are not feasible to achieve. A DSV is a hybrid standard that maintains the long-term water quality goal of fully protecting all designated uses, while temporarily authorizing an alternative effluent limit (AEL) to be developed for a specific pollutant and specific point source discharge where compliance with the water quality based effluent limit (WQBEL) is not feasible.

In reliance upon Durango West Metropolitan District #2's (DWMD's) commitment to implement upgrades and a continued maintenance program, the Commission adopted a DSV for Animas and Florida Segment 13b for ammonia that represents the highest degree of protection of the classified use that is feasible for DWMD. For ammonia, the monthly chronic total ammonia effluent limits for DWMD shall not be more restrictive than 15 mg/L prior to 12/31/2024. The Commission expects that DWMD will submit a progress report for the San Juan Basin Issues Formulation Hearing in November 2016 and expects that report to include information regarding whether there are any downstream domestic water supply wells that are impacted by the discharge.

**PARTIES TO THE RULEMAKING HEARING**

1. Durango West Metropolitan District #2
2. Colorado Parks and Wildlife
3. U.S. Environmental Protection Agency

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Tracking number: 2014-00296

**Opinion of the Attorney General rendered in connection with the rules adopted by the  
Water Quality Control Commission (1002 Series)**

**on 08/11/2014**

**5 CCR 1002-34**

**REGULATION NO. 34 - CLASSIFICATIONS AND NUMERIC STANDARDS FOR SAN JUAN AND  
DOLORES RIVER BASINS**

The above-referenced rules were submitted to this office on 08/12/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

A handwritten signature in black ink, appearing to read "JWS", is written over a light blue rectangular background.

**John W. Suthers**

Attorney General

by Daniel D. Domenico

Solicitor General

August 20, 2014 16:11:35

## **Permanent Rules Adopted**

### **Department**

Department of Public Health and Environment

### **Agency**

Water Quality Control Commission (1002 Series)

### **CCR number**

5 CCR 1002-37

### **Rule title**

5 CCR 1002-37 REGULATION NO. 37 - CLASSIFICATIONS AND NUMERIC  
STANDARDS FOR LOWER COLORADO RIVER BASIN 1 - eff 12/31/2014

### **Effective date**

12/31/2014

**COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**  
**WATER QUALITY CONTROL COMMISSION**

**5 CCR 1002-37**

**REGULATION NO. 37**  
**CLASSIFICATIONS AND NUMERIC STANDARDS**  
**FOR**  
**LOWER COLORADO RIVER BASIN**

**37.1    AUTHORITY**

These regulations are promulgated pursuant to section 25-8-101 et seq. C.R.S., as amended, and in particular, 25-8-203 and 25-8-204.

**37.2    PURPOSE**

These regulations establish classifications and numeric standards for the Colorado River Basin, including all tributaries and standing bodies of water. This includes all or parts of Garfield, Mesa, Rio Blanco, Moffat and Routt Counties. The classifications identify the actual beneficial uses of the water. The numeric standards are assigned to determine the allowable concentrations of various parameters. Discharge permits will be issued by the Water Quality Control Division to comply with basic, narrative, and numeric standards and control regulations so that all discharges to waters of the state protect the classified uses. (See Regulation No. 31, section 31.14). It is intended that these and all other stream classifications and numeric standards be used in conjunction with and be an integral part of Regulation No. 31 Basic Standards and Methodologies for Surface Water.

**37.3    INTRODUCTION**

These regulations and tables present the classifications and numeric standards assigned to stream segments listed in the attached tables (see section 37.6). As additional stream segments are classified and numeric standards for designated parameters are assigned for this drainage system, they will be added to or replace the numeric standards in the tables in section 37.6. Any additions or revisions of classifications or numeric standards can be accomplished only after public hearing by the Commission and proper consideration of evidence and testimony as specified by the statute and the "basic regulations".

**37.4    DEFINITIONS**

See the Colorado Water Quality Control Act and the codified water quality regulations for definitions.

**37.5    BASIC STANDARDS**

**(1)    TEMPERATURE**

All waters of the Colorado River Basin are subject to the following standard for temperature. (Discharges regulated by permits, which are within the permit limitations, shall not be subject to enforcement proceedings under this standard). Temperature shall maintain a normal pattern of diurnal and seasonal fluctuations with no abrupt changes and shall have no increase in temperature of a magnitude, rate, and duration deemed deleterious to the resident aquatic life. This standard shall not be interpreted or applied in a manner inconsistent with section 25-8-104, C.R.S.

(2) QUALIFIERS

See Basic Standards and Methodologies for Surface Water for a listing of organic standards at 31.11 and metal standards found at 31.16 Table III. The column in the tables headed "Water + Fish" are presumptively applied to all aquatic life class 1 streams which also have a water supply classification, and are applied to aquatic life class 2 streams which also have a water supply classification, on a case-by-case basis as shown in the Tables 37.6. The column in the tables at 31.11 headed "Fish Ingestion" is presumptively applied to all aquatic life class 1 streams which do not have a water supply classification, and are applied to aquatic life class 2 streams which do not have a water supply classification, on a case-by-case basis as shown in Tables 37.6.

(3) URANIUM

- (a) All waters of the Lower Colorado River Basin, are subject to the following basic standard for uranium, unless otherwise specified by a water quality standard applicable to a particular segment. However, discharges of uranium regulated by permits which are within these permit limitations shall not be a basis for enforcement proceedings under this basic standard.
- (b) Uranium level in surface waters shall be maintained at the lowest practicable level.
- (c) In no case shall uranium levels in waters assigned a water supply classification be increased by any cause attributable to municipal, industrial, or agricultural discharges so as to exceed 16.8-30 ug/l or naturally-occurring concentrations (as determined by the State of Colorado), whichever is greater.
  - (i) The first number in the 16.8-30 ug/l range is a strictly health-based value, based on the Commission's established methodology for human health-based standards. The second number in the range is a maximum contaminant level, established under the federal Safe Drinking Water Act that has been determined to be an acceptable level of this chemical in public water supplies, taking treatability and laboratory detection limits into account. Control requirements, such as discharge permit effluent limitations, shall be established using the first number in the range as the ambient water quality target, provided that no effluent limitation shall require an "end-of-pipe" discharge level more restrictive than the second number in the range. Water bodies will be considered in attainment of this standard, and not included on the Section 303(d) List, so long as the existing ambient quality does not exceed the second number in the range.

(4) NUTRIENTS

Prior to May 31, 2022, interim nutrient values will be considered for adoption only in the limited circumstances defined at 31.17(e). These circumstances include headwaters, Direct Use Water Supply (DUWS) Lakes and Reservoirs, and other special circumstances determined by the Commission. Additionally, prior to May 31, 2017, only total phosphorus and chlorophyll a will be considered for adoption. After May 31, 2017, total nitrogen will be considered for adoption per the circumstances outlined in 31.17(e).

Prior to May 31, 2022, nutrient criteria will be adopted for headwaters on a segment by segment basis for the Lower Colorado Basin. Moreover, pursuant to 31.17(e) nutrient standards will only be adopted for waters upstream of all permitted domestic wastewater treatment facilities discharging prior to May 31, 2012 or with preliminary effluent limits requested prior to May 31, 2012, and any non-domestic facilities subject to Regulation 85 effluent limits and discharging prior to May 31, 2012. The following is a list of all permitted domestic wastewater treatment facilities discharging prior to May 31, 2012 or with preliminary effluent limits requested prior to May 31,

2012, and any non-domestic facilities subject to Regulation 85 effluent limits and discharging prior to May 31, 2012 in the Lower Colorado Basin:

Segment	Permittee	Facility name	Permit No.
COLCLY02	Craig City of	CRAIG WWTF	CO0040037
COLCWH07	Whiteriver RV LLC	WHITERIVER RV SANITATION WWTF	COG588048
COLCWH07	Meeker Sanitation District	MEEKER SANITATION DISTRICT	CO0047139
COLCWH13b	Shell Frontier Oil & Gas Inc	CORRAL GULCH WWTF	CO0048859
COLCWH21	Rangely Town of	RANGELY WWTF	CO0000010
COLCLC01	Rifle City of	RIFLE REGIONAL WW RECLAMATION FACILITY	CO0048151
COLCLC01	Wastewater Treatment Service LLC	WASTE WATER TREATMENT SERVICES WWTF	COG589110
COLCLC01	Silt Town of	SILT TOWN OF	COG588046
COLCLC01	West Glenwood Springs SD	WEST GLENWOOD SPRINGS SD	COG588008
COLCLC01	Glenwood Springs City of	GLENWOOD SPRINGS REGIONAL WWTF	CO0048852
COLCLC01	Talbott Enterprises Inc	TALBOTT ENTERPRISES INC	COG588061
COLCLC01	New Castle Town of	NEW CASTLE WWTF	COG588062
COLCLC01	Riverbend Water and Sewer Company	RIVERBEND SUBDIVISION	COG588006
COLCLC02a	Colorado Retail Ventures Services LLC	CAMEO EAGLE TRAVEL CENTER	CO0048847
COLCLC02a	DeBeque Town of	DEBEQUE TOWN OF	CO0048135
COLCLC02a	Battlement Mesa Metro Dist	BATTELEMENT MESA METRO DIST WWTF	COG589086
COLCLC02b	Clifton Sanitation District	CLIFTON SANITATION DISTRICT	CO0033791
COLCLC02b	Palisade Town of	PALISADE WWTF	CO0000012
COLCLC03	Fruita City of	FRUITA WASTEWATER RECLAMATION FACILITY	CO0048854
COLCLC04e	Tri-State Generation & Transmission Assoc Inc	Rifle Station	CO0042447
COLCLC07a	Weiss & Associates	CANYON CREEK ESTATES WWTF	COG588081
COLCLC13b	Mesa Co/Grand Junction City of	PERSIGO WWTF	CO0040053
COLCLC15a	Grand Mesa Metro Dist 2	GRANDE MESA METRO DIST 2	CO0023485
COLCLC15a	Mesa WSD	MESA WSD	CO0048143
COLCLC15c	Collbran Town of	VALLEYWIDE SEWERAGE SYSTEM	CO0040487

Prior to May 31, 2022:

- For segments located entirely above these facilities, nutrient standards apply to the entire segment.
- For segments with portions downstream of these facilities, *nutrient standards only apply above these facilities*. A footnote “C” was added to the total phosphorus and chlorophyll a standards in these segments. The footnote references the table of qualified facilities at 37.5(4).
- For segments located entirely below these facilities, nutrient standards do not apply.

A footnote “B” was added to the total phosphorus and chlorophyll a standards in lakes segments as nutrients standards apply only to lakes and reservoirs larger than 25 acres surface area.

## 37.6 TABLES

### (1) Introduction

The numeric standards for various parameters in the attached tables were assigned by the Commission after a careful analysis of the data presented on actual stream conditions and on



actual and potential water uses.

Numeric standards are not assigned for all parameters listed in the tables attached to Regulation No. 31. If additional numeric standards are found to be needed during future periodic reviews, they can be assigned by following the proper hearing procedures.

(2) Abbreviations:

(a) The following abbreviations are used in the attached tables:

ac	=	acute (1-day)
Ag	=	silver
Al	=	aluminum
As	=	arsenic
B	=	boron
Ba	=	barium
Be	=	beryllium
°C	=	degrees celsius
Cd	=	cadmium
ch	=	chronic (30-day)
Chla	=	Chlorophyll a
CL	=	cold lake temperature tier
Cl	=	chloride
CLL	=	cold large lake temperature tier
Cl <sub>2</sub>	=	residual chlorine
CN	=	free cyanide
CrIII	=	trivalent chromium
CrVI	=	hexavalent chromium
CS-I	=	cold stream temperature tier one
CS-II	=	cold stream temperature tier two
Cu	=	copper
dis	=	dissolved
D.O.	=	dissolved oxygen
DM	=	daily maximum
DUWS	=	direct use water supply
E.Coli	=	escherichia coli
Fe	=	iron
Hg	=	mercury
mg/l	=	milligrams per liter
ml	=	milliliters
Mn	=	manganese
Mo	=	molybdenum
MWAT	=	maximum weekly average temperature
NH <sub>3</sub>	=	ammonia as N(nitrogen)
Ni	=	nickel
NO <sub>2</sub>	=	nitrite as N (nitrogen)
NO <sub>3</sub>	=	nitrate as N (nitrogen)
OW	=	outstanding waters
P	=	phosphorus
Pb	=	lead
S	=	sulfide as undissociated H <sub>2</sub> S (hydrogen sulfide)
Sb	=	antimony
sc	=	sculpin
Se	=	selenium
SO <sub>4</sub>	=	sulfate

sp	=	spawning
T	=	temperature
Tot	=	total
TI	=	thallium
tr	=	trout
Trec	=	total recoverable
TVS	=	table value standard
U	=	uranium
ug/l	=	micrograms per liter
UP	=	use-protected
WAT	=	weekly average temperature
WL	=	warm lake temperature tier
WS	=	water supply
WS-I	=	warm stream temperature tier one
WS-II	=	warm stream temperature tier two
WS-III	=	warm stream temperature tier three
WS-IV	=	warm stream temperature tier four
Zn	=	zinc

(b) In addition, the following abbreviations were used:

Fe(ch)	=	WS(dis)
Mn(ch)	=	WS(dis)
SO <sub>4</sub>	=	WS

These abbreviations mean: For all surface waters with an actual water supply use, the less restrictive of the following two options shall apply as numerical standards, as specified in the Basic Standards and Methodologies at 31.16 Table II and III:

(i) existing quality as of January 1, 2000; or

(ii)	Iron	=	300 ug/l (dissolved)
	Manganese	=	50 ug/l (dissolved)
	SO <sub>4</sub>	=	250 mg/l

For all surface waters with a “water supply” classification that are not in actual use as a water supply, no water supply standards are applied for iron, manganese or sulfate, unless the Commission determines as the result of a site-specific rulemaking hearing that such standards are appropriate.

(c) As used in the Temporary Modifications and Qualifiers column of the tables in 37.6(5), the term “type A” refers to a Temporary Modification adopted pursuant to subsection 31.7(3)(a)(ii)(A) of the Basic Standards and Methodologies for Surface Water (i.e., “there is significant uncertainty regarding the water quality standard necessary to protect current and/or future use”). As used in the Temporary Modifications and Qualifiers column of the tables in 37.6(5), the term “type B” refers to a Temporary Modification adopted pursuant to subsection 31.7(3)(a)(ii)(B) of the Basic Standards and Methodologies for Surface Water (i.e., “there is significant uncertainty regarding the extent to which existing quality is the result of natural or irreversible human-induced conditions”).

(d) Temporary Modification for Water + Fish Chronic Arsenic Standard

(i) The temporary modification for chronic arsenic standards applied to segments with an arsenic standard of 0.02 ug/l that has been set to protect the Water+Fish qualifier is listed in the temporary modification and qualifiers column as As(ch)=hybrid.

- (ii) For discharges existing on or before 6/1/2013, the temporary modification is: As(ch)=current condition, expiring on 12/31/2021.
- (iii) For new or increased discharges commencing on or after 6/1/2013, the temporary modification is: As(ch)=0.02-3.0 ug/l (Trec), expiring on 12/31/2021.
  - (a) The first number in the range is the health-based water quality standard previously adopted by the Commission for the segment.
  - (b) The second number in the range is a technology based value established by the Commission for the purpose of this temporary modification.
  - (c) Control requirements, such as discharge permit effluent limitations, shall be established using the first number in the range as the ambient water quality target, provided that no effluent limitation shall require an "end-of-pipe" discharge level more restrictive than the second number in the range.

(3) Table Value Standards

In certain instances in the attached tables, the designation "TVS" is used to indicate that for a particular parameter a "table value standard" has been adopted. This designation refers to numerical criteria set forth in the Basic Standards and Methodologies for Surface Water. The criteria for which the TVS are applicable are on the following table.

TABLE VALUE STANDARDS  
(Concentrations in ug/l unless noted)

PARAMETER <sup>(1)</sup>	TABLE VALUE STANDARDS <sup>(2)(3)</sup>
Aluminum (Trec)	<p>Acute = <math>e^{(1.3695[\ln(\text{hardness})]+1.8308)}</math></p> <p>pH equal to or greater than 7.0</p> <p>Chronic=<math>e^{(1.3695[\ln(\text{hardness})]-0.1158)}</math></p> <p>pH less than 7.0</p> <p>Chronic= <math>e^{(1.3695[\ln(\text{hardness})]-0.1158)}</math> or 87, whichever is more stringent</p>
Ammonia <sup>(4)</sup>	<p>Cold Water = (mg/l as N)Total</p> $acute = \frac{0.275}{1 + 10^{7.204 - pH}} + \frac{39.0}{1 + 10^{pH - 7.204}}$ $chronic = \left[ \frac{0.0577}{1 + 10^{7.688 - pH}} + \frac{2.487}{1 + 10^{pH - 7.688}} \right] * MIN(2.85, 1.45 * 10^{0.028(25 - T)})$
	<p>Warm Water = (mg/l as N)Total</p> $acute = \frac{0.411}{1 + 10^{7.204 - pH}} + \frac{58.4}{1 + 10^{pH - 7.204}}$
	$chronic \text{ (Apr 1 - Aug 31)} = \left[ \frac{0.0577}{1 + 10^{7.688 - pH}} + \frac{2.487}{1 + 10^{pH - 7.688}} \right] * MIN(2.85, 1.45 * 10^{0.028(25 - T)})$ $chronic \text{ (Sep 1 - Mar 31)} = \left[ \frac{0.0577}{1 + 10^{7.688 - pH}} + \frac{2.487}{1 + 10^{pH - 7.688}} \right] * 1.45 * 10^{0.028 * (25 - MAX(T, 7))}$
Cadmium	<p>Acute = <math>(1.136672 - [\ln(\text{hardness}) \times (0.041838)]) \times e^{0.9151[\ln(\text{hardness})] - 3.1485}</math></p> <p>Acute(Trout) = <math>(1.136672 - [\ln(\text{hardness}) \times (0.041838)]) \times e^{0.9151[\ln(\text{hardness})] - 3.6236}</math></p> <p>Chronic = <math>(1.101672 - [\ln(\text{hardness}) \times (0.041838)]) \times e^{0.7998[\ln(\text{hardness})] - 4.4451}</math></p>
Chromium III <sup>(5)</sup>	<p>Acute = <math>e^{(0.819[\ln(\text{hardness})]+2.5736)}</math></p> <p>Chronic = <math>e^{(0.819[\ln(\text{hardness})]+0.5340)}</math></p>
Chromium VI <sup>(5)</sup>	<p>Acute = 16</p> <p>Chronic = 11</p>
Copper	<p>Acute = <math>e^{(0.9422[\ln(\text{hardness})]-1.7408)}</math></p> <p>Chronic = <math>e^{(0.8545[\ln(\text{hardness})]-1.7428)}</math></p>
Lead	<p>Acute = <math>(1.46203 - [\ln(\text{hardness}) \times (0.145712)]) \times e^{(1.273[\ln(\text{hardness})] - 1.46)}</math></p> <p>Chronic = <math>(1.46203 - [\ln(\text{hardness}) \times (0.145712)]) \times e^{(1.273[\ln(\text{hardness})] - 4.705)}</math></p>
Manganese	<p>Acute = <math>e^{(0.3331[\ln(\text{hardness})]+6.4676)}</math></p> <p>Chronic = <math>e^{(0.3331[\ln(\text{hardness})]+5.8743)}</math></p>
Nickel	<p>Acute = <math>e^{(0.846[\ln(\text{hardness})]+2.253)}</math></p> <p>Chronic = <math>e^{(0.846[\ln(\text{hardness})]+0.0554)}</math></p>
Selenium <sup>(6)</sup>	<p>Acute = 18.4</p> <p>Chronic = 4.6</p>

Silver	$\text{Acute} = \frac{1}{2}e^{(1.72[\ln(\text{hardness})]-6.52)}$ $\text{Chronic} = e^{(1.72[\ln(\text{hardness})]-9.06)}$ $\text{Chronic(Trout)} = e^{(1.72[\ln(\text{hardness})]-10.51)}$					
Temperature	TEMPERATURE TIER	TIER CODE	SPECIES EXPECTED TO BE PRESENT	APPLICABLE MONTHS	TEMPERATURE STANDARD (°C)	
					(MWAT)	(DM)
	Cold Stream Tier I	CS-I	brook trout, cutthroat trout	June – Sept.	17.0	21.7
				Oct. – May	9.0	13.0
	Cold Stream Tier II	CS-II	all other cold-water species	April – Oct.	18.3	23.9
				Nov. – March	9.0	13.0
	Cold Lake	CL	brook trout, brown trout, cutthroat trout, lake trout, rainbow trout, Arctic grayling, sockeye salmon	April – Dec.	17.0	21.2
				Jan. – March	9.0	13.0
	Cold Large Lake (>100)	CLL	brown trout, lake trout, rainbow trout	April – Dec.	18.3	23.8
				Jan. – March	9.0	13.0
	Warm Stream Tier I	WS-I	common shiner, Johnny darter, orangethroat darter	March – Nov.	24.2	29.0
				Dec. – Feb.	12.1	14.5
	Warm Stream Tier II	WS-II	brook stickleback, central stoneroller, creek chub, longnose dace, Northern redbelly dace, finescale dace, razorback sucker, white sucker	March – Nov.	27.5	28.6
				Dec. – Feb.	13.8	14.3
	Warm Stream Tier III	WS-III	all other warm-water Species	March – Nov.	28.7	31.8
				Dec. – Feb.	14.3	15.9
	Warm Lakes	WL	yellow perch, walleye, pumpkinseed, smallmouth bass, striped bass, white bass, largemouth bass, bluegill, spottail shiner, Northern pike, tiger muskellunge, black crappie, common carp, gizzard shad, sauger, white crappie, wiper	April – Dec.	26.3	29.5
				Jan. – March	13.2	14.8
Uranium	$\text{Acute} = e^{(1.1021[\ln(\text{hardness})]+2.7088)}$					

	Chronic = $e^{(1.1021[\ln(\text{hardness})]+2.2382)}$
Zinc	<p>Acute = <math>0.978 \cdot e^{(0.9094[\ln(\text{hardness})]+0.9095)}</math></p> <p>Chronic = <math>0.986 \cdot e^{(0.9094[\ln(\text{hardness})]+0.6235)}</math>  if hardness less than 102 mg/l CaCO<sub>3</sub></p> <p>Chronic (sculpin) = <math>e^{(2.140[\ln(\text{hardness})]-5.084)}</math></p>

#### TABLE VALUE STANDARDS - FOOTNOTES

- (1) *Metals are stated as dissolved unless otherwise specified.*
  - (2) *Hardness values to be used in equations are in mg/l as calcium carbonate and shall be no greater than 400 mg/L. The hardness values used in calculating the appropriate metal standard should be based on the lower 95 per cent confidence limit of the mean hardness value at the periodic low flow criteria as determined from a regression analysis of site-specific data. Where insufficient site-specific data exists to define the mean hardness value at the periodic low flow criteria, representative regional data shall be used to perform the regression analysis. Where a regression analysis is not appropriate, a site-specific method should be used. In calculating a hardness value, regression analyses should not be extrapolated past the point that data exist.*
  - (3) *Both acute and chronic numbers adopted as stream standards are levels not to be exceeded more than once every three years on the average.*
  - (4) *For acute conditions the default assumption is that salmonids could be present in cold water segments and should be protected, and that salmonids do not need to be protected in warm water segments. For chronic conditions, the default assumptions are that early life stages could be present all year in cold water segments and should be protected. In warm water segments the default assumption is that early life stages are present and should be protected only from April 1 through August 31. These assumptions can be modified by the Commission on a site-specific basis where appropriate evidence is submitted.*
  - (5) *Unless the stability of the chromium valence state in receiving waters can be clearly demonstrated, the standard for chromium should be in terms of chromium VI. In no case can the sum of the instream levels of Hexavalent and Trivalent Chromium exceed the water supply standard of 50 ug/l total chromium in those waters classified for domestic water use.*
  - (6) *Selenium is a bioaccumulative metal and subject to a range of toxicity values depending upon numerous site-specific variables.*
- (4) Assessment Criteria
- The following criteria shall be used when assessing whether a specified waterbody is in attainment of the specified standard.
- (a) White River Segment 13b Selenium Assessment Thresholds and Locations

Corral Gulch, Se(ch)=5.7 ug/l  
Assessment location: Corral Gulch at the mouth.  
Duck Creek, Se(ch)=7.9 ug/l

Assessment location: Duck Creek at the mouth.  
Yellow Creek, Se(ch)=6.9 ug/l  
Assessment location: Yellow Creek upstream from the confluence with Barcus Creek.  
Greasewood Creek, Se(ch)=6.0 ug/l  
Assessment location: Greasewood Creek at the mouth.

(b) White River Segment 13c Iron Assessment Threshold and Location

Yellow Creek, Fe(ch)=1625 ug/l  
Assessment location: Yellow Creek at the mouth.

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**37.33 STATEMENT OF BASIS SPECIFIC STATUTORY AUTHORITY AND PURPOSE JUNE 9, 2014**  
**RULEMAKING; FINAL ACTION AUGUST 11, 2014 EFFECTIVE DATE DECEMBER 31, 2014**

The provisions of C.R.S. 25-8-202(1)(a), (b) and (2); 25-8-203; 25-8-204; and 25-8-402; provide the specific statutory authority for adoption of these regulatory amendments. The Commission also adopted in compliance with 24-4-103(4) C.R.S. the following statement of basis and purpose.

**BASIS AND PURPOSE**

A. Waterbody Segmentation

Some water bodies were moved from one segment to another segment to improve organization and/or to facilitate changes in classified uses or standards. Some new segments were created to facilitate changes that applied only to a portion of an existing segment. The following changes were made:

Lower Yampa/Green River Segments 3b and 3i: Lower Johnson Gulch from the confluence with Pyeatt Gulch at CO 107 to the confluence with the Yampa River was moved from Segment 3b to a new Segment 3i to facilitate a change in the antidegradation designation.

Lower Yampa/Green River Segments 3d and 3h: Lay Creek was moved from Segment 3d to a new Segment 3h to facilitate the adoption of a water supply use classification and standards.

Lower Yampa/Green River Segments 3c and 3e: Wilson Creek was moved from segment 3e to segment 3c to upgrade the aquatic life use from Warm 2 to Warm 1.

Lower Yampa/Green River Segment 6a was renumbered as segment 6.

Lower Yampa/Green River Segments 9 and 12c: Beaver Creek was moved from Segment 9 to a new Segment 12c to facilitate the adoption of the Outstanding Waters designation.

Lower Yampa/Green River Segments 17b and 17c: Scandinavian Gulch was moved from Segment 17b to a new Segment 17c to facilitate adoption of standards for the protection of the aquatic life use.

Lower Yampa/Green River Segments 20 and 22d: Conway Draw was moved from Segment 20 to a new Segment 22d to facilitate the adoption of a water supply use classification and standards.

White River Segments 4a and 4b: Lost Creek and Snell Creek were moved from Segment 4a to Segment 4b to facilitate the adoption of the Outstanding Waters designation.

White River Segments 16a and 16b: Some of the tributaries to Piceance Creek were moved from

Segment 16a to a new Segment 16b to facilitate the adoption of a water supply use classification and standards on Segment 16a.

White River Segments 18a and 18b: Some tributaries to Piceance Creek were moved from Segment 18a to a new Segment 18b to facilitate the adoption of a water supply use classification and standards on Segment 18b.

Lower Colorado River Segments 11b and 11c: The water bodies in these segments were combined into one segment because the designation, uses and standards are the same.

Lower Colorado Segments 13a and 13f: Asbury Creek was moved from Segment 13a to a new Segment 13f to facilitate the adoption of a water supply use classification and standards.

Lower Colorado River Segments 19 and 21: All lakes and reservoirs tributary to Plateau Creek and within Grand Mesa National Forest were moved from Segment 19 to Segment 21 to upgrade the aquatic life use from Warm 1 to Cold 1 and to facilitate the adoption of water supply standards.

Lower Colorado Segments 15a – 15d and 16: Plateau Creek and its tributaries (Segment 15) were divided into 4 segments to facilitate changing the temperature tier on the new Segment 15b and the adoption of site-specific ambient temperature standards on the new Segments 15c and 15d. The upstream boundary of Segment 16 was changed to facilitate a change in the aquatic life use and adoption of ambient temperature standards for the lower portion of Plateau Creek.

The following segment descriptions were edited to improve clarity, correct typographical errors, and correct spelling errors:

Lower Yampa/Green River Segments: 10, 19a

White River Segments: 9a, 9b, 10b, 13b

Lower Colorado River Segments: 11g, 12b, 13d

#### B. Revised Aquatic-Life Use Classifications

The Commission reviewed information regarding the existing aquatic communities. Class 2 segments with exceptionally high MMI scores, or a wide variety of fish species were upgraded from Class 2 to Class 1. Segments that supported Colorado State Species of Special Concern such as mountain sucker or native cutthroat trout were also upgraded from Class 2 to Class 1.

The following segments or portions of segments were upgraded from Warm 2 to Warm 1:

Lower Yampa/Green River Segments: 3e (Wilson Creek moved to 3c), 22b, 22c

The following segments were upgraded from Cold 2 to Cold 1:

White River Segment: 19

Lower Colorado River Segments: 11b, 11h

Based upon evidence that the waters are expected to support cold water fisheries, portions of the following segment were upgraded from Warm 1 to Cold 1:

Lower Colorado River Segment: 21

Based upon the results of a Use Attainability Analysis that demonstrated the Cold Aquatic Life Use is not attainable, the following segment was downgraded from Cold 1 to Warm 1:



Lower Colorado River Segment: 16

C. Recreation Classifications and Standards

Based upon evidence that portions of these segments support recreational fishing and are publicly accessible and/or accessible to families who live in the area, it was determined that there is the potential for primary contact recreation. The following segments with year-round Recreation N standards were upgraded to Recreation P:

White River Segments: 13b, 13c, 17, 18b, 20

Lower Colorado River Segment: 8

The use classification for the following segment was inadvertently changed to Recreation P in 2007, and the Recreation N use classification was restored in this rulemaking hearing:

White River Segment: 16

D. Water Supply Use Classification and Standards

The Commission added a Water Supply use classification and standards on segments where there is a drinking water intake or where the evidence demonstrates a reasonable potential for a hydrological connection between surface water and alluvial wells used for drinking water. The Water Supply use classification and standards were added to the following segments:

Lower Yampa/Green River Segments: 3h, 5, 6, 12a, 16, 22d

White River Segments: 13b, 14a, 16a, 18b, 20

Lower Colorado River Segments: 11h, 13f

A review of the segments with an existing Water Supply use classification showed that some segments were missing one or more standards to protect that use. The full suite of Water Supply standards were added to the following segment:

Lower Colorado River segments: 11e

E. Agriculture Standards

Molybdenum: In 2010, the Commission adopted a new standard for molybdenum to protect cattle from the effects of molybdenosis. The table value adopted at that time was 300 ug/l, but included an assumption of 48 mg/day of copper supplementation to ameliorate the effects of molybdenosis. State and local experts on cattle nutrition indicated that copper supplementation in the region is common, but is not universal. Therefore, copper supplementation assumption was removed from the equation, which yields a standard of 160 ug/l. The Commission expects that this value may be revised when data on the copper and molybdenum content of local forage becomes available. The Commission also notes that in light of EPA's disapproval of the 300 ug/l table value in the Basic Standards and Methodologies for Surface Water, the Commission intends to review this value during the next Basic Standards triennial review.

The Agriculture table value assumes that the safe copper:molybdenum ratio is 4:1. Food and water intake is based on a 273 kg (600 lb) feeder steer consuming 6.8 kg/day of dry matter and 20% of its body weight in water per day. Total copper and molybdenum intakes are calculated from the following equations:

$$\text{Cu intake mg/day} = [([\text{Cu}] \text{ forage, mg/kg}) \times (\text{forage intake, kg/day})] + [([\text{Cu}] \text{ water, mg/l}) \times (\text{water intake, L/day})] + (\text{Cu supplementation, mg/day})$$

$$\text{Mo intake mg/day} = [([\text{Mo}] \text{ forage, mg/kg}) \times (\text{forage intake, kg/day})] + [([\text{Mo}] \text{ water, mg/l}) \times (\text{water intake, L/day})] + (\text{Mo supplementation, mg/day})$$

The assumed values for these equations are as follows:

[Cu] forage = 7 mg/kg, [Mo] forage = 0.5 mg/kg, forage intake = 6.8 kg/day, [Cu] water = 0.008 mg/L, [Mo] water = 0.375 mg/L, water intake = 54.6 L/day, Cu supplementation = 0 mg/day, Mo supplementation = 0 mg/day.

A molybdenum standard of 160 ug/l was adopted for the following segments in Regulation 37 that have an Agriculture use classification, and where livestock or irrigated forage are present or expected to be present:

Lower Yampa/Green River Segments: 2, 3a, 3b, 3c, 3d, 3e, 3f, 3g, 3h, 3i, 4, 5, 6, 7, 8, 9, 10, 12a, 12b, 12c, 13a, 13b, 15, 16, 17a, 17c, 18, 19a, 19b, 20, 21, 22a, 22b, 22c, 22d, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33

White River Segments: 1, 3, 4a, 4b, 6, 7, 8, 9a, 9b, 9c, 9d, 10a, 10b, 11, 12, 13a, 13b, 13c, 13d, 14a, 14b, 15, 16a, 16b, 17, 18a, 18b, 19, 20, 21, 22, 23, 24, 25, 26, 27

Lower Colorado River Segments: 1, 2a, 2b, 3, 4a, 4c, 4d, 4e, 4f, 5, 6, 7a, 7b, 8, 9a, 9b, 9c, 10, 11a, 11b, 11d, 11e, 11f, 11g, 11h, 12a, 12b, 13a, 13b, 13c, 13d, 13e, 13f, 14a, 14b, 14c, 15a, 15b, 15c, 15d, 16, 17a, 17b, 18, 19, 20, 21

The following segment does not have an Agriculture use classification or a Water Supply use classification, and a molybdenum standard was not applied:

Lower Yampa/Green River Segment: 17b

Lower Colorado River Segment: 4b

#### F. Changes to Antidegradation Designation

The Commission reviewed all Cold 2 segments that were Use-Protected to determine if that designation was still warranted. No segments were changed to Reviewable.

The Commission reviewed all Warm 2 segments to determine if the Use-Protected designation is still warranted. Based upon available water quality data that meet the criteria of 31.8(2), the Use-Protection designation was removed from the following segments:

Lower Yampa/Green River Segments: 3g, 3i, 6

The Commission adopted an Outstanding Waters (OW) designation for the following segments based on evidence presented by WildEarth Guardians showing that water quality meets the requirements of 31.8(2) (a):

Lower Yampa/Green River Segment: 12c

White River Segment: 4b

The presence of designated Critical Cutthroat Trout Habitat by the State of Colorado proves the exceptional recreational or ecological significance of the waters. Outreach conducted by WildEarth Guardians demonstrated support for the change in designation, the outstanding nature of these waters and the need for the additional protection of the outstanding waters designation. The Commission understands that existing land uses, including grazing, are in place in these watersheds. The evidence demonstrates that these existing land uses are compatible with the OW designation since the current high level of water quality has been attained with these uses in place. It is the Commission's intent that this OW designation should not be used to establish additional permit requirements for existing uses within this area.

#### G. Ambient Standards

Ambient standards are adopted where natural or irreversible man-induced conditions result in exceedances of table value standards. The Commission reviewed the information that is the basis for these standards, as well as any new information that would indicate whether they are still appropriate, need to be modified, or should be dropped. In some cases, new ambient standards were adopted. The following segments have ambient-based standards for metals that were revised:

Lower Yampa/Green River Segment: 16  
White River Segments: 13b, 13c

New assessment locations were adopted for White River segments 13b and 13c, because additional data was available to develop individual site-specific selenium standards for Corral Gulch, Duck Creek, Greasewood Creek and Yellow Creek. The assessment locations are listed at 37.6(4).

#### H. Aquatic Life Ammonia and Metals Standards

New Table Value Standards: The zinc, zinc sculpin, and aluminum table values were revised in the 2010 Basic Standards hearing. The acute and chronic zinc, zinc sculpin, and aluminum equations in 37.6(3) were modified to conform to Regulation 31. The footnotes to the table values in 37.6(3) were renumbered to match the appropriate references. Footnote (4 old) was deleted and a new footnote 4 was added.

Zinc sculpin standards: In low-hardness situations (hardness below 102 mg/L), the zinc equation is not protective of mottled sculpin (*Cottus bairdi*), a native west-slope fish species. For the following segments where sculpin are expected to occur and hardness could be low, both the zinc sculpin standard and the chronic zinc table value standard were adopted:

Lower Yampa/Green River Segments: 4, 7, 10, 15, 18  
White River Segments: 1, 3, 6

Based upon a review of existing hardness and fishery data, the sculpin-specific zinc equation was deleted from the following segments where hardness is consistently higher than 102 mg/L:

Lower Yampa/Green River Segments: 2, 12a, 13b  
Lower Colorado River Segments: 7a, 15a

The following segments were designated as Aquatic Life Warm 2 or Cold 2, but lacked standards to fully support the Aquatic Life Use. Available data indicates that the Aquatic Life Use is attainable, and therefore the full suite of standards protective of aquatic life was added to the following segments, with a delayed effective date of December 31, 2019 on Lower Yampa segment 3b:

Lower Yampa/Green River Segments: 3b, 3i, 6, 17c  
Lower Colorado River Segments: 11b, 13a

The goal qualifier for selenium was deleted on Lower Yampa/Green River segment 3b, based upon data that indicate the table value standard for selenium is attained.

#### I. Uranium Standards

At the 2010 Basic Standards rulemaking hearing, the Commission changed the Water Supply table value for uranium from 30 ug/L to a hyphenated standard of 16.8-30 ug/L. The Commission revised the language in 37.5(3)(c) to reflect the change to the basin-wide standard. A new section 37.5(3)(c)(i) was added to explain the hyphenated standard. Subsection 37.5(3)(d) was deleted because it was redundant with 37.5(3)(c).

#### J. Temporary Modifications

All existing Temporary Modifications were examined to determine if they should be allowed to expire or be extended. Temporary Modifications were not automatically extended if non-attainment persisted due to revisions made to the Temporary Modification provisions in 2005 and 2010.

To remain consistent with the Commission's decisions regarding arsenic at 37.31, all existing temporary modifications for arsenic of "As(ch)=hybrid" (expiration date of 12/31/21) were retained. An arsenic temporary modification was added to the following segments, which had an existing or newly added chronic arsenic standard of 0.02 ug/L and a permitted discharger with a predicted water quality-based effluent limit compliance problem:

Lower Yampa/Green River Segments: 5, 17a,  
Lower Colorado River Segments: 4c, 11h, 15b, 15c, 15d, 17b

New or modified Temporary Modifications were adopted for the following segments.

Lower Colorado Segment 4e: The Commission extended the Type A Temporary Modification for copper from December 31, 2015 to June 30, 2017. The extension of the Temporary Modification of the underlying copper standards recognizes that Tri-State Generation and Transmission Association, Inc. (Tri-State) provided water quality data predicting a compliance issue associated with its permitted discharge on Lower Colorado Segment 4e and there remains uncertainty as to the appropriate standards for that segment. Tri-State submitted a plan to collect additional data and to evaluate the bioavailability of copper in this segment. The progress on resolving the uncertainty with the copper standards will be reviewed in the annual Temporary Modification hearing in December 2015.

The Commission shortened the Type A Temporary Modification for iron from December 31, 2015 to June 30, 2015. This will allow time for Tri-State to develop a more definitive plan to resolve the uncertainty with the iron standards. Tri-State provided water quality data predicting a compliance issue associated with its permitted discharge on Lower Colorado Segment 4e and there remains uncertainty as to the appropriate standards for that segment. Tri-State may request an extension of the temporary modification at the annual Temporary Modification hearing in December 2014.

Where the Commission has adopted a narrative temporary modification of "current condition", the Commission intends that, when implementing the temporary modification in a CDPS permit, the permit conditions will reflect the current effluent quality, recognizing that it changes over time due to seasonal variability, change in the influent flow and the concentration over time.

#### K. Temperature

##### Ambient temperature standards for lakes

In the 2008 triennial review, the WAT standard was found to be unattainable for a number of cold large lakes and reservoirs with apparently healthy cold-water fish populations. Because summertime temperature in the mixed layer for large lakes and reservoirs is very well correlated to the waterbody's elevation, the Commission adopted ambient temperature standards for large lakes wherever data were available to characterize a WAT and the thermal characteristics of the lakes and reservoirs were determined to be the result of natural conditions. As a result of setting ambient temperature standards, the adequate refuge defined in Regulation 31, Table 1, footnote 5(c)(iii) was assessed using the site-specific temperature standard, and many lakes with obvious dissolved oxygen issues were considered to have adequate refuge.

Footnote 5(c)(iii) states:

When a lake or reservoir is stratified, the mixed layer may exceed the criteria in Table 1 provided that an adequate refuge exists in water below the mixed layer. Adequate refuge depends on concurrent attainment of applicable dissolved oxygen standards. If the refuge is not adequate

because of dissolved oxygen levels, the lake or reservoir may be included on the 303(d) List as “impaired” for dissolved oxygen, rather than for temperature.

To ensure that adequate refuge is defined in a way that protects the Aquatic Life use, the Commission adopted Footnote D which was applied to the temperature standard for deep stratified lakes. Footnote D states “Assessment of adequate refuge shall rely on the Cold Large Lake table value temperature criterion and applicable dissolved oxygen standard rather than the site-specific temperature standard”, and was applied to the following lake segments:

White River segment: 25 (Lake Avery)

Lower Colorado River segment: 20 (Rifle Gap, Harvey Gap and Vega Reservoirs)

Based upon a Use Attainability Analysis that demonstrates the table value standards for temperature are not attainable, ambient-based temperature standards were adopted for the following segments:

Lower Colorado River Segments: 15c, 15d, 16

Based upon a Use Attainability Analysis that determined Cold Stream Tier I species were not expected to occur, the temperature standard was changed from CS-I to CS-II on the following segment:

Lower Colorado Segment: 15b

#### L. Nutrients

In March 2012, the Commission adopted interim nutrient values in the Basic Standards (Regulation 31) and created a new statewide control regulation (Regulation 85) to address nutrients in Colorado. Regulation 31.17 includes interim nutrient values for total phosphorus, total nitrogen, and chlorophyll a for both lakes and reservoirs, and rivers and streams. Due to the phased implementation approach adopted with these criteria (31.17(e)), the Commission adopted only total phosphorus and chlorophyll a standards at this time. Nitrogen standards were not considered as part of this rulemaking hearing, but will be considered in the next triennial review, currently scheduled for June, 2019.

Total phosphorus and chlorophyll a standards were adopted for waters upstream of all permitted domestic wastewater treatment facilities discharging prior to May 31, 2012 or with preliminary effluent limits requested prior to May 31, 2012, and any non-domestic facilities subject to Regulation 85 effluent limits and discharging prior to May 31, 2012. A new section (4) was added at 37.5 describing implementation of the interim nutrient values into the tables at 37.6, and includes a table which lists these facilities and the segment to which they discharge.

- For segments located entirely above these facilities, nutrient standards apply to the entire segment.
- For segments with portions downstream of these facilities, *nutrient standards only apply above these facilities*. A footnote “C” was added to the total phosphorus and chlorophyll a standards in these segments. The footnote references the table of qualified facilities at 37.5(4).
- For segments located entirely below these facilities, nutrient standards do not apply.
- For rivers and streams segments, total phosphorus standards were adopted above the dischargers listed at 37.5(4) for segments with an Aquatic Life Use. Chlorophyll a standards were adopted above the dischargers listed at 37.5(4) for segments with either an E, P, or U Recreation use classification.
- For lakes and reservoirs segments above the dischargers listed at 37.5(4), total phosphorus and chlorophyll standards were adopted with a footnote “B” as these

standards only apply to waterbodies larger than 25 acres surface area.

31.17(e)(ii) also allows the Commission to adopt numeric nutrient standards for Direct Use Water Supply (DUWS) lakes and reservoirs. No proposals were made by the Division to adopt standards based on this provision in this rulemaking.

31.17(e)(iii) also allows the Commission to adopt numeric nutrient standards for circumstances where the provisions of Regulation 85 are not adequate to protect waters from existing or potential nutrient pollution. No proposals were made to adopt standards based on this provision in this rulemaking.

Chlorophyll a standards were adopted for the following segments:

Lower Yampa/Green River Segments: 3b, 3c, 3e, 3f, 3g, 3i, 4, 5, 6, 7, 8, 9, 10, 12a, 12b, 12c, 13a, 13b, 15, 16, 17a, 18, 19a, 19b, 20, 22c, 22d, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33  
White River Segments: 1, 3, 4a, 4b, 6, 7, 8, 9c, 9d, 10a, 10b, 11, 13b, 13c, 13d, 14a, 14b, 15, 16a, 16b, 17, 18b, 19, 20, 22, 23, 24, 25, 26, 27  
Lower Colorado River Segments: 4b, 4c, 5, 6, 7a, 7b, 8, 9a, 9b, 9c, 10, 11h, 12b, 13a, 13b, 13c, 13d, 13e, 13f, 14a, 14b, 14c, 15a, 15b, 15c, 15d, 16, 17a, 17b, 18, 19, 20, 21

Total Phosphorus standards were adopted for the following segments:

Lower Yampa/Green River Segments: 3a, 3b, 3c, 3d, 3e, 3f, 3g, 3h, 3i, 4, 5, 6, 7, 8, 9, 10, 12a, 12b, 12c, 13a, 13b, 15, 16, 17a, 17b, 17c, 18, 19a, 19b, 20, 21, 22a, 22b, 22c, 22d, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33  
White River Segments: 1, 3, 4a, 4b, 6, 7, 8, 9a, 9b, 9c, 9d, 10a, 10b, 11, 13a, 13b, 13c, 13d, 14a, 14b, 15, 16a, 16b, 17, 18a, 18b, 19, 20, 22, 23, 24, 25, 26, 27  
Lower Colorado River Segments: 4a, 4b, 4c, 4d, 4e, 4f, 5, 6, 7a, 7b, 8, 9a, 9b, 9c, 10, 11a, 11b, 11d, 11e, 11f, 11g, 11h, 12a, 12b, 13a, 13b, 13c, 13d, 13e, 13f, 14a, 14b, 14c, 15a, 15b, 15c, 15d, 16, 17a, 17b, 18, 19, 20, 21

Lower Colorado Segment 4e: A footnote C was added to the total phosphorus standard on this segment and on Lower Colorado Segment 4f. Tri-State Generation and Transmission Association, Inc was added to the list of facilities at 37.5(4). Tri-State submitted effluent data that demonstrated a compliance problem with the total phosphorus standard. At the time when Regulation 31.17(e) was adopted, it was not apparent that cooling tower discharges were a significant source of phosphorus or that these facilities would be impacted by nutrient standards. The Commission decided to include Tri-State in the list of exempt dischargers at 37.5(4) as a matter of policy on the basis that the overall intention of the phased implementation of nutrient criteria was to control existing discharges through Regulation 85, rather than through water-quality based effluent limits.

#### M. Direct Use Water Supply Sub-classification

Also in the March 2012 rulemaking hearing, the Commission adopted a sub-classification of the Domestic Water Supply Use called "Direct Use Water Supply Lakes and Reservoirs Sub-classification (Regulation 31, at 31.13(1)(d)(i)). This sub-classification is for water supply lakes and reservoirs where there is a plant intake location in the lake or reservoir or a man-made conveyance from the lake or reservoir that is used regularly to provide raw water directly to a water treatment plant that treats and disinfects raw water. In this action today, the Commission has begun to apply this sub-classification and anticipates that it will take several basin reviews to evaluate all the reservoirs in the basin. The Commission adopted the DUWS sub-classification on the following reservoirs and added "DUWS" to the classification column in the standards tables. The public water systems are listed along with the reservoirs and segments.

White River segment 11:	Kenney Reservoir (Western Fuels)
Lower Colorado River segment 21:	Jerry Creek Reservoirs Number 1 and 2 (Ute Water Conservancy District)

Lower Colorado River segment 21: Palisade Cabin Reservoir (Town of Palisade)

31.17(e)(ii) also allows the Commission to adopt numeric nutrient standards for Direct Use Water Supply ("DUWS") lakes and reservoirs. No standards were adopted based on this provision in this rulemaking.

N. Chromium III Standards

A review of the chromium III standards showed that standards to protect the Aquatic Life use classification may not be protective of the Agriculture use in some high-hardness situations. A chromium III standard of  $\text{CrIII(ch)}=100(\text{Trec})$  was added to segments with Aquatic Life and Agriculture use classifications, but no Water Supply use. The acute chromium III standard associated with the Water Supply use is protective of the Agriculture use, but is not protective of the Aquatic Life use when hardness is less than 61 ug/l. For segments that have both Aquatic Life and Water Supply Use classifications, a chronic chromium III standard of  $\text{CrIII(ch)}=\text{TVS}$  was added to all segments that did not previously have that standard. Changes were made to the following segments:

Lower Yampa/Green River Segments: 2, 3b, 3c, 3d, 3e, 3h, 3i, 7, 9, 10, 12b, 12c, 13a, 13b, 17a, 19a, 19b, 21, 22a, 22b, 22c, 23, 25, 26, 27, 30, 32, 33  
White River Segments: 1, 3, 4a, 6, 7, 8, 9a, 9b, 9c, 9d, 10a, 10b, 11, 12, 13c, 13d, 14b, 15, 16b, 17, 18a, 19, 21, 23, 25, 26, 27  
Lower Colorado River Segments: 1, 2a, 2b, 3, 4a, 4c, 4d, 4e, 4f, 5, 6, 7a, 7b, 8, 9a, 9b, 9c, 10, 11a, 11b, 11d, 11f, 12a, 12b, 13a, 13b, 13c, 13d, 13f, 14a, 14b, 14c, 15a, 15b, 15c, 15d, 16, 17a, 17b, 18, 19, 20, 21

O. Other Site-Specific Revisions

A footnote "A" was added to the chronic arsenic standard to explain the hyphenated standard on the following segments:

Lower Yampa/Green River Segments: 3e, 3h, 6, 13a, 13b, 16, 17c, 22d,  
White River Segments: 9a, 9b, 9c, 9d, 13b, 16a, 18b  
Lower Colorado River Segments: 4a, 4d, 6, 11e, 12b, 13f

PARTIES TO THE RULEMAKING HEARING

1. Grand County, Northwest Colorado Council of Governments and Northern Colorado Water Conservancy District
2. Eagle River Water and Sanitation District
3. Trout Unlimited
4. WildEarth Guardians
5. Tri-State Generation and Transmission Association
6. Seneca Coal Company, Peabody Sage Creek Mining, LLC, and Twentymile Coal Company
7. Western Resource Advocates
8. Colorado River Water Conservation District
9. Climax Molybdenum Company
10. Trapper Mining, Inc.
11. Upper Blue Sanitation District
12. Clinton Ditch & Reservoir Company
13. Vail Resorts, Inc. and Vail Summit Resorts, Inc.
14. Eagle Park Reservoir Company
15. Upper Eagle Regional Water Authority
16. Colorado Parks and Wildlife
17. Denver Water
18. Environmental Protection Agency
19. Powdr-Copper Mountain, LLC

20. Town of Frisco



## STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS

REGION:11		Desig	Classifications	NUMERIC STANDARDS						TEMPORARY MODIFICATIONS AND QUALIFIERS
BASIN: Lower Yampa River/Green River				PHYSICAL and BIOLOGICAL	INORGANIC mg/l		METALS ug/l			
Stream Segment Description										
1. Deleted.										
2. Mainstem of the Yampa River from a point immediately below the confluence with Elkhead Creek to the confluence with the Green River.			Aq Life Warm 1 Recreation E Water Supply Agriculture	T=TVS(WS-II) °C D.O. = 5.0 mg/l pH = 6.5-9.0 E. Coli=126/100ml	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS	As(ac)=340 As(ch)=0.02(Trec) Cd(ac/ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Mn(ch)=WS(dis) Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac/ch)=TVS Zn(ac/ch)=TVS	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
3a. All tributaries to the Yampa River, including all wetlands, from a point immediately below the confluence with Elkhead Creek to a point immediately below the confluence with the Little Snake River, except for the specific listings in Segments 3b through 15, 17a, 17b and 18.		UP	Aq Life Warm 2 Recreation N Agriculture	T=TVS(WS-III) °C D.O. = 5.0 mg/l pH = 6.5-9.0 E. Coli=630/100ml	CN(ac)=0.2 NO <sub>2</sub> =10 NO <sub>3</sub> =100	B=0.75 P=170 ug/l	As(ch)=100(Trec) Be(ch)=100(Trec) Cd(ch)=10(Trec) CrIII(ch)=100(Trec)	CrVI(ch)=100(Trec) Cu(ch)=200(Trec) Pb(ch)=100(Trec) Mn(ch)=200(Trec) Mo(ch)=160(Trec)	Ni(ch)=200(Trec) Se(ch)=20(Trec) Zn(ch)=2000(Trec)	
3b. Mainstem of Upper Johnson Gulch from its source to confluence with Pyeatt Gulch at CO 107. Mainstems of Pyeatt Gulch, Ute Gulch, Castor Gulch, No Name Gulch, Flume Gulch, Buzzard Gulch, Coyote Gulch, Deal Gulch, Horse Gulch (BOTH), and Elk Gulch, including all tributaries from their sources to their mouths.		UP	Aq Life Warm 2 Recreation P Agriculture	T=TVS(WS-III) °C D.O. = 5.0 mg/l pH = 6.5-9.0 E. Coli=205/100ml Chla=150 mg/m <sup>2</sup>	CN(ac)=0.2 NH <sub>3</sub> (ac/ch)=TVS* Cl <sub>2</sub> (ch)=0.011* CN=0.005*	S=0.002* B=4.0 NO <sub>2</sub> =10 NO <sub>3</sub> =100 P=170 ug/l	As(ac)=340 As(ch)=100(Trec) Be(ch)=100(Trec) Cd(ac/ch)=TVS* Cd(ch)=10 CrIII(ac/ch)=TVS* CrIII(ch)=100(Trec) CrVI(ac/ch)=TVS* CrVI(ch)=100 Cu(ac/ch)=TVS* Cu(ch)=200	Fe(ch)=1000(Trec) * Pb(ch)=100(Trec) Pb(ac/ch)=TVS* Mn(ac/ch)=TVS* Mn(ch)=200(Trec) Hg(ch)=0.01(tot) * Mo(ch)=160(Trec)	Ni(ac/ch)=TVS* Ni(ch)=200 Se(ac/ch)=TVS* Se(ch)=20 Ag(ac/ch)=TVS* Zn(ac/ch)=TVS* Zn(ch)=2000	*Effective 12/31/19
3c. Mainstem of Milk Creek, including all tributaries and wetlands, from Thornburgh (County Rd 15) to the confluence with the Yampa River except for the specific listings in Segment 3b and 3e.			Aq Life Warm 1 Recreation P Water Supply Agriculture	T=TVS(WS-II) °C D.O. = 5.0 mg/l pH = 6.5-9.0 E. Coli=205/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=170 ug/l	As(ac)=340 As(ch)=0.02(Trec) Cd(ac/ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Mn(ch)=WS(dis) Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac/ch)=TVS Zn(ac/ch)=TVS	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
3d. Mainstem of Temple Gulch and Morgan Gulch from their sources to their confluences with the Yampa River.			Aq Life Warm 2 Recreation N Agriculture	T=TVS(WS-II) °C D.O. = 5.0 mg/l pH = 6.5-9.0 E. Coli=630/100ml	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =100 P=170ug/l	As(ac)=340 As(ch)=100(Trec) Cd(ac/ch)=TVS CrIII(ac/ch)=TVS CrIII(ch)=100(Trec) CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac/ch)=TVS Zn(ac/ch)=TVS	
3e. Mainstem of Good Spring Creek and its tributaries above Wilson Reservoir.			Aq Life Warm 2 Recreation P Water Supply Agriculture	T=TVS(WS-II) °C D.O. = 5.0 mg/l pH = 6.5-9.0 E. Coli=205/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=170 ug/l	As(ac)=340 As(ch)=0.02-10(Trec)^ Cd(ac/ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Mn(ch)=WS(dis) Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac/ch)=TVS Zn(ac/ch)=TVS	
3f. Big Gulch			Aq Life Warm 2 Recreation E Agriculture	T=TVS(WS-II) °C D.O. = 5.0 mg/l pH = 6.5-9.0 E. Coli=126/100ml Chla=150 mg/m <sup>2</sup>	CN(ac)=0.2 NO <sub>2</sub> =10 NO <sub>3</sub> =100	B=0.75 P=170 ug/l	As(ch)=100(Trec) Be(ch)=100(Trec) Cd(ch)=10(Trec) CrIII(ch)=100(Trec) CrVI(ch)=100(Trec) Cu(ch)=200(Trec)	Pb(ch)=100(Trec) Mn(ch)=200(Trec) Mo(ch)=160(Trec)	Ni(ch)=200(Trec) Se(ch)=20(Trec) Zn(ch)=2000(Trec)	
3g. Mainstems of Ben Morgan Creek, Boxelder Gulch, Collom Gulch, Hale Gulch and Jubb Creek, including all tributaries from their sources to their mouths.			Aq Life Warm 2 Recreation P Agriculture	T=TVS(WS-III) °C D.O. = 5.0 mg/l pH = 6.5-9.0 E. Coli=205/100ml Chla=150 mg/m <sup>2</sup>	CN(ac)=0.2 NO <sub>2</sub> =10 NO <sub>3</sub> =100	B=0.75 P=170 ug/l	As(ch)=100(Trec) Be(ch)=100(Trec) Cd(ch)=10(Trec) CrIII(ch)=100(Trec) CrVI(ch)=100(Trec) Cu(ch)=200(Trec)	Pb(ch)=100(Trec) Mn(ch)=200(Trec) Mo(ch)=160(Trec)	Ni(ch)=200(Trec) Se(ch)=20(Trec) Zn(ch)=2000(Trec)	

# STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS

REGION:11		Desig	Classifications	NUMERIC STANDARDS						TEMPORARY MODIFICATIONS AND QUALIFIERS
BASIN: Lower Yampa River/Green River				PHYSICAL and BIOLOGICAL	INORGANIC mg/l		METALS ug/l			
Stream Segment Description										
3h.	Lay Creek from the source to the confluence with the Yampa River.		Aq Life Warm 2 Recreation N Water Supply Agriculture	T=TVS(WS-II) °C D.O. = 5.0 mg/l pH = 6.5-9.0 E. Coli=630/100ml	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=170ug/l	As(ac)=340 As(ch)=0.02-10(Trec)^ Cd(ac/ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac/ch)=TVS Zn(ac/ch)=TVS	
3i.	Lower Johnson Gulch from the confluence with Pyeatt Gulch at CO 107 to the confluence with the Yampa River.		Aq Life Warm 2 Recreation P Agriculture	T=TVS(WS-III) °C D.O. = 5.0 mg/l pH = 6.5-9.0 E. Coli=205/100ml Chla=150 mg/m²	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=4.0 NO <sub>2</sub> =10 NO <sub>3</sub> =100 P=170 ug/l	As(ac)=340 As(ch)=100(Trec) Cd(ac/ch)=TVS CrIII(ac/ch)=TVS CrIII(ch)=100(Trec) CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac/ch)=TVS Zn(ac/ch)=TVS	
4.	North and South Fork of Fortification Creek, including all wetlands and tributaries, from their sources to their confluence. Little Cottonwood Creek, including all tributaries and wetlands from the source to the confluence with Fortification Creek.		Aq Life Cold 1 Recreation P Water Supply Agriculture	T=TVS(CS-I) °C D.O. = 6.0 mg/l D.O. (sp)=7.0 mg/l pH = 6.5-9.0 E. Coli=205/100ml Chla=150 mg/m²	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Mn(ch)=WS(dis) Hg(ch)=0.01(Trec) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS Zn(ch)=TVS(sc)	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
5.	Mainstem of Fortification Creek from the confluence of the North Fork and South Fork to the confluence with the Yampa River.		Aq Life Warm 1 Recreation E Water Supply Agriculture	T=TVS(WS-II) °C D.O. = 5.0 mg/l pH = 6.5-9.0 E. Coli=126/100ml Chla=150 mg/m²	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=170 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac/ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac/ch)=TVS Zn(ac/ch)=TVS	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
6.	All tributaries to Fortification Creek, including all wetlands, from the confluence of the North and South Forks to the confluence with the Yampa River, except for the specific listings in Segments 4 and 7.		Aq Life Warm 2 Recreation P Water Supply Agriculture	T=TVS(WS-III) °C D.O. = 5.0 mg/l pH = 6.5-9.0 E. Coli=205/100ml Chla=150 mg/m²	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.05 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=170 ug/l (tot)	As(ac)=340 As(ch)=0.02-10(Trec)^ Cd(ac/ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ac)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac/ch)=TVS Zn(ac/ch)=TVS	
7.	Mainstem of Little Bear Creek, including all tributaries and wetlands, from the source to the confluence with Dry Fork.		Aq Life Cold 1 Recreation P Agriculture	T=TVS(CS-II) °C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH = 6.5-9.0 E. Coli=205/100ml Chla=150 mg/m²	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =100 P=110 ug/l (tot)	As(ac)=340 As(ch)=7.6(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac/ch)=TVS CrIII(ch)=100(Trec) CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS Zn(ch)=TVS(sc)	
8.	Mainstem of the East Fork of the Williams Fork River, including all tributaries and wetlands which are within the boundaries of the Flat Tops Wilderness Area.	OW	Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I) °C D.O. = 6.0 mg/l D.O. (sp)=7.0 mg/l pH = 6.5-9.0 E. Coli=126/100ml Chla=150 mg/m²	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Mn(ch)=WS(dis) Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
9.	Mainstems of the East and South Forks of the Williams Fork River, including all wetlands and tributaries, which are within the boundary of Routt National Forest, except for the specific listings in Segment 8 and 12c.		Aq Life Cold 1 Recreation P Water Supply Agriculture	T=TVS(CS-I) °C D.O. = 6.0 mg/l D.O. (sp)=7.0 mg/l pH = 6.5-9.0 E.Coli=205/100ml Chla=150 mg/m²	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	

# STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS

REGION:11		Desig	Classifications	NUMERIC STANDARDS					TEMPORARY MODIFICATIONS AND QUALIFIERS	
BASIN: Lower Yampa River/Green River				PHYSICAL and BIOLOGICAL	INORGANIC mg/l		METALS ug/l			
Stream Segment Description										
10.	Mainstem of the East Fork of the Williams Fork River including all tributaries and wetlands, from the boundary of Routt National Forest to the confluence with the South Fork of the Williams Fork River.		Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I) °C D.O. = 6.0 mg/l D.O. (sp)=7.0 mg/l pH = 6.5-9.0 E.Coli=126/100ml Chla=150 mg/m²	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS Zn(ch)=TVS(sc)	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
11.	Deleted.									
12a.	Mainstem of the South Fork of the Williams Fork River and Beaver Creek, including all tributaries and wetlands, from the boundary of Routt National Forest to their mouths, Milk Creek including all tributaries and wetlands from its source to a point just below the confluence with Clear Creek. Morapos Creek including all wetlands and tributaries from the source to the confluence with the Williams Fork River.		Aq Life Cold 1 Recreation P Water Supply Agriculture	T=TVS(CS-I) °C D.O. = 6.0 mg/l D.O. (sp)=7.0 mg/l pH = 6.5-9.0 E.Coli=205/100ml Chla=150 mg/m²	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
12b.	Milk Creek including all tributaries and wetlands from a point just below the confluence with Clear Creek to Thornburgh (County Rd 15).		Aq Life Cold 1 Recreation P Agriculture	T=TVS(CS-II) °C D.O. = 6.0 mg/l D.O. (sp)=7.0 mg/l pH = 6.5-9.0 E.Coli=205/100ml Chla=150 mg/m²	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac/ch)=TVS CrIII(ch)=100(Trec) CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
12c.	Mainstem of Beaver Creek, including all wetlands and tributaries, which are within the Routt National Forest.	OW	Aq Life Cold 1 Recreation P Water Supply Agriculture	T=TVS(CS-I) °C D.O. = 6.0 mg/l D.O. (sp)=7.0 mg/l pH = 6.5-9.0 E.Coli=205/100ml Chla=150 mg/m²	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
13a.	Mainstem of the Williams Fork River from the confluence of the East Fork and South Fork to the Highway 13/789 bridge at Hamilton.		Aq Life Cold 2 Recreation E Water Supply Agriculture	T=TVS(CS-II) °C D.O. = 6.0 mg/l D.O. (sp)=7.0 mg/l pH = 6.5-9.0 E.Coli=126/100ml Chla=150 mg/m²	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02-10(Trec)^ Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
13b.	Mainstem of the Williams Fork River from the highway 13/789 bridge at Hamilton to the confluence with the Yampa River.		Aq Life Warm 2 Recreation E Water Supply Agriculture	T=TVS(WS-II) °C D.O. = 5.0 mg/l pH = 6.5-9.0 E.Coli=126/100ml Chla=150 mg/m²	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=170 ug/l (tot)	As(ac)=340 As(ch)=0.02-10(Trec)^ Cd(ac/ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac/ch)=TVS Zn(ac/ch)=TVS	
14.	Deleted.									
15.	Those portions of the Little Snake River which are in Colorado, from its first crossing of the Colorado/Wyoming border to a point immediately above the confluence with Powder Wash (Moffatt County).		Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-II) °C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH = 6.5-9.0 E.Coli=126/100ml Chla=150 mg/m²	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS Zn(ch)=TVS(sc)	

# STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS

REGION:11		Desig	Classifications	NUMERIC STANDARDS						TEMPORARY MODIFICATIONS AND QUALIFIERS
BASIN: Lower Yampa River/Green River				PHYSICAL and BIOLOGICAL	INORGANIC mg/l		METALS ug/l			
Stream Segment Description										
16.	Mainstem of the Little Snake River from a point immediately above the confluence with Powder Wash to the confluence with the Yampa River.		Aq Life Warm 2 Recreation E Water Supply Agriculture	T=TVS(WS-III) °C D.O.=5.0 mg/l pH = 6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=170 ug/l (tot)	As(ac)=340 As(ch)=0.02-10(Trec) <sup>A</sup> Cd(ac/ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=4400(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac/ch)=TVS Zn(ac/ch)=TVS	
17a.	All tributaries to the Little Snake River from its first crossing of the Colorado/Wyoming border to a point immediately below the confluence with Fourmile Creek, except for the specific listing in Segment 18.		Aq Life Cold 1 Recreation P Agriculture	T=TVS(CS-II) °C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=205/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =100 P=110 ug/l	As(ac)=340 As(ch)=7.6(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac/ch)=TVS CrIII(ch)=100(Trec) CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
17b.	All tributaries to the Little Snake River from a point immediately below the confluence with Fourmile Creek to the confluence with the Yampa River, except for the specific listing in Segment 17c.	UP	Aq Life Warm 2 Recreation N Agriculture	T=TVS(WS-III) °C D.O. = 5.0 mg/l pH = 6.5-9.0 E.Coli=630/100ml	CN(ac)=0.2 NO <sub>2</sub> =10 NO <sub>3</sub> =100	S=0.05 B=0.75 P=170 ug/l (tot)	As(ch)=100(Trec) Be(ch)=100(Trec) Cd(ch)=10(Trec) CrIII(ch)=100(Trec)	CrVI(ch)=100(Trec) Cu(ch)=200(Trec) Pb(ch)=100(Trec) Mn(ch)=200(Trec)	Ni(ch)=200(Trec) Se(ch)=20(Trec) Zn(ch)=2000(Trec)	
17c.	Scandinavian Gulch from the source to the confluence with the Little Snake River.		Aq Life Warm 2 Recreation N Agriculture	T=TVS(WS-III) °C D.O.= 5.0 mg/l pH = 6.5-9.0 E.Coli=630/100ml	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.05 B=0.75 NO <sub>2</sub> =10 NO <sub>3</sub> =100 P=170 ug/l (tot)	As(ac)=340 As(ch)=0.02-10(Trec) <sup>A</sup> Cd(ac/ch)=TVS CrIII(ac/ch)=TVS CrIII(ch)=100(Trec) CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Hg(ac)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac/ch)=TVS Zn(ac/ch)=TVS	
18.	Mainstem of Slater Creek, including all tributaries and wetlands, from the source to a point just below the confluence with Second Creek. The mainstems of Fourmile and Willow Creeks, including all tributaries and wetlands, from their sources to the boundary of the Routt National Forest.		Aq Life Cold 1 Recreation P Water Supply Agriculture	T=TVS(CS-I) °C D.O. = 6.0 mg/l D.O.(sp)=7.0 mg/l pH = 6.5-9.0 E.Coli=205/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS Zn(ch)=TVS(sc)	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
19a.	Mainstem of the Green River within Colorado (Moffat County) from its entry at the Utah/Colorado border to a point just above the confluence with the Yampa River.		Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-II) °C D.O. = 6.0 mg/l D.O. (sp)=7.0 mg/l pH = 6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
19b.	Mainstem of the Green River within Colorado (Moffat County) from a point just above the confluence with the Yampa River to its exit at the Utah/Colorado border.		Aq Life Warm 1 Recreation E Water Supply Agriculture	T=TVS(WS-II) °C D.O. = 5.0 mg/l pH = 6.5-9.0 E. Coli=126/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=170 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac/ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac/ch)=TVS Zn(ac/ch)=TVS	
20.	All tributaries to the Green River in Colorado, including all wetlands, except for the specific listings in Segments 21and 22a - 22d. All tributaries to the Yampa River from a point immediately below the confluence with the Little Snake River to the confluence with the Green River, except for the specific listings in segments 15 through 18.		Aq Life Cold 2 Recreation E Agriculture	T=TVS(CS-II) °C D.O. = 6.0 mg/l D.O.(sp) =7.0 mg/l pH = 6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup>	CN(ac)=0.2 NO <sub>2</sub> =10 NO <sub>3</sub> =100	S=0.05 B=0.75 P=110 ug/l (tot)	As(ch)=100(Trec) Be(ch)=100(Trec) Cd(ch)=10(Trec) CrIII(ch)=100(Trec)	CrVI(ch)=100(Trec) Cu(ch)=200(Trec) Pb(ch)=100(Trec) Mn(ch)=200(Trec) Mo(ch)=160(Trec)	Ni(ch)=200(Trec) Se(ch)=20(Trec) Zn(ch)=2000(Trec)	

# STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS

REGION:11		Desig	Classifications	NUMERIC STANDARDS						TEMPORARY MODIFICATIONS AND QUALIFIERS
BASIN: Lower Yampa River/Green River				PHYSICAL and BIOLOGICAL	INORGANIC mg/l		METALS ug/l			
Stream Segment Description										
21.	Mainstem of Beaver Creek, including all tributaries and wetlands, from the source to the confluence with the Green River within Colorado.		Aq Life Cold 1 Recreation N Water Supply Agriculture	T=TVS(CS-I) °C D.O. = 6.0 mg/l D.O. (sp)=7.0 mg/l pH = 6.5-9.0 E.Coli=630/100ml	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
22a.	Mainstem of Vermillion Creek, including all tributaries and wetlands, from the Colorado/Wyoming border to a point just below the confluence with Talamantes Creek.		Aq Life Cold 1 Recreation N Agriculture	T=TVS(CS-I) °C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH = 6.5-9.0 E.Coli=630/100ml	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =100 P=110 ug/l	As(ac)=340 As(ch)=7.6(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac/ch)=TVS CrIII(ch)=100(Trec) CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
22b.	Vermillion Creek, including all tributaries and wetlands, from a point just below the confluence with Talamantes Creek to the confluence with the Green River, except for the specific listing in segment 22c.		Aq Life Warm 1 Recreation N Agriculture	T=TVS(WS-III) °C D.O.= 5.0 mg/l pH = 6.5-9.0 E.Coli=630/100ml	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =100 P=170 ug/l (tot)	As(ac)=340 As(ch)=7.6(Trec) Cd(ac/ch)=TVS CrIII(ac/ch)=TVS CrIII(ch)=100(Trec) CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac/ch)=TVS Zn(ac/ch)=TVS	
22c.	Mainstem of Vermillion Creek from HWY 318 to the confluence with the Green River.		Aq Life Warm 1 Recreation E Agriculture	T=TVS(WS-III) °C D.O.=5.0 mg/l pH = 6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =100 P=170 ug/l (tot)	As(ac)=340 As(ch)=7.6(Trec) Cd(ac/ch)=TVS CrIII(ac/ch)=TVS CrIII(ch)=100(Trec) CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Ni(ac/ch)=TVS Mo(ch)=160(Trec)	Se(ac/ch)=TVS Ag(ac/ch)=TVS Zn(ac/ch)=TVS	
22d.	Conway Draw		Aq Life Cold 2 Recreation E Water Supply Agriculture	T=TVS(CS-II) °C D.O. = 6.0 mg/l D.O.(sp) =7.0 mg/l pH = 6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup>	CN(ac)=0.2	S=0.05 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l	As(ch)=0.02-10(Trec) <sup>a</sup> Be(ch)=4.0(Trec) Cd(ac)=5.0(Trec) CrIII(ac)=50(Trec)	CrVI(ac)=50(Trec) Cu(ch)=200(Trec) Fe(ch)=WS(dis) Pb(ac)=50(Trec) Mn(ch)=WS(dis) Mn(ch)=200(Trec) Hg(ac)=2.0(tot) Mo(ch)=160(Trec)	Ni(ch)=100(Trec) Se(ch)=20(Trec) Zn(ch)=2000(Trec)	
23.	All lakes and reservoirs tributary to the Yampa River, from a point just below the confluence with Elkhead Creek to a point just below the confluence with the Little Snake River except for the specific listings in segments 24-32. This segment includes Martin Cull Reservoir, and OVO Reservoir.		Aq Life Warm 1 Recreation U Agriculture	T=TVS(WL) °C D.O. = 5.0 mg/l pH = 6.5-9.0 E. Coli=126/100ml Chla=20 ug/l (tot) <sup>b</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =100 P=83 ug/l (tot) <sup>b</sup>	As(ac)=340 As(ch)=7.6(Trec) Cd(ac/ch)=TVS CrIII(ac/ch)=TVS CrIII(ch)=100(Trec) CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac/ch)=TVS Zn(ac/ch)=TVS	
24.	Freeman Reservoir and Aldrich Lakes.		Aq Life Cold 1 Recreation E Agriculture	T=TVS(CL) °C D.O.= 6.0 mg/l D.O.(sp)=7.0 mg/l pH = 6.5-9.0 E. Coli=126/100ml Chla=8 ug/l (tot) <sup>b</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =100 P=25 ug/l (tot) <sup>b</sup>	As(ac)=340 As(ch)=7.6(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac/ch)=TVS CrIII(ch)=100(Trec) CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
25.	All lakes and reservoirs tributary to Fortification Creek from the source to the confluence of the North and South Forks. All lakes and reservoirs tributary to Little Cottonwood Creek from the source to the confluence with Fortification Creek, except for the specific listing in segment 24. All lakes and reservoirs tributary to Little Bear Creek from the source to the confluence with the Dry Fork.		Aq Life Cold 1 Recreation U Water Supply Agriculture	T=TVS(CL) °C D.O. = 6.0 mg/l D.O. (sp)=7.0 mg/l pH = 6.5-9.0 E. Coli=126/100ml Chla=8 ug/l (tot) <sup>b</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=25 ug/l (tot) <sup>b</sup>	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Mn(ch)=WS(dis) Hg(ch)=0.01(Trec) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	

# STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS

REGION:11		Desig	Classifications	NUMERIC STANDARDS					TEMPORARY MODIFICATIONS AND QUALIFIERS
BASIN: Lower Yampa River/Green River				PHYSICAL and BIOLOGICAL	INORGANIC mg/l	METALS ug/l			
Stream Segment Description									
26. All lakes and reservoirs tributary to Fortification Creek, including Ralph White Lake, except for specific listings in segments 24 and 25.			Aq Life Warm 1 Recreation U Agriculture	T=TVS(WL) °C D.O. = 5.0 mg/l pH = 6.5-9.0 E. Coli=126/100ml Chla=20 ug/l (tot) <sup>a</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =100 P=83ug/l (tot) <sup>a</sup>	As(ac)=340 As(ch)=7.6(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac/ch)=TVS CrIII(ch)=100(Trec) CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS
27. All lakes and reservoirs tributary to Milk Creek from Thornburgh (County Rd 15) to the confluence with the Yampa River, including Wilson Reservoir.			Aq Life Warm 1 Recreation U Water Supply Agriculture	T=TVS(WL) °C D.O. = 5.0 mg/l pH = 6.5-9.0 E. Coli=126/100ml Chla=20 ug/l <sup>b</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=83 ug/l <sup>b</sup>	As(ac)=340 As(ch)=0.02(Trec) Cd(ac/ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac/ch)=TVS Zn(ac/ch)=TVS
28. All lakes and reservoirs tributary to the East Fork of the Williams Fork River, within the boundaries of the Flat Tops Wilderness Area.		OW	Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CL) °C D.O. = 6.0 mg/l D.O. (sp)=7.0 mg/l pH = 6.5-9.0 E. Coli=126/100ml Chla=8 ug/l <sup>b</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=25 ug/l <sup>b</sup>	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=.0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS
29. All lakes and reservoirs tributary to the East and South Forks of the Williams Fork River, and lakes and reservoirs tributary to the mainstem of the Williams Fork River, from the source to the Highway 13/789 bridge at Hamilton, except for the specific listings in segment 28.			Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CL) °C D.O. = 6.0 mg/l D.O. (sp)=7.0 mg/l pH = 6.5-9.0 E. Coli=126/100ml Chla=8 ug/l (tot) <sup>a</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=25 ug/l (tot) <sup>a</sup>	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS
30. All lakes and reservoirs tributary to Milk Creek from the source to Thornburgh (County Rd 15). All lakes and reservoirs tributary to Morapos Creek from the source to the confluence with the Williams Fork River.			Aq Life Cold 1 Recreation U Agriculture	T=TVS(CL) °C D.O. = 6.0 mg/l D.O. (sp)=7.0 mg/l pH = 6.5-9.0 E. Coli=126/100ml Chla=8 ug/l (tot) <sup>a</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =100 P=25 ug/l (tot) <sup>b</sup>	As(ac)=340 As(ch)=7.6(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac/ch)=TVS CrIII(ch)=100(Trec) CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS
31. All lakes and reservoirs tributary to Slater Creek, from the source to a point just below the confluence with Second Creek, including Slater Creek Lake. All lakes and reservoirs tributary to Fourmile and Willow Creeks from their sources to the boundary of the Routt National Forest.			Aq Life Cold 1 Recreation U Water Supply Agriculture	T=TVS(CL) °C D.O. = 6.0 mg/l D.O. (sp)=7.0 mg/l pH = 6.5-9.0 E. Coli=126/100ml Chla=8 ug/l (tot) <sup>a</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=25 ug/l (tot) <sup>a</sup>	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS
32. All lakes and reservoirs tributary to the Yampa River from a point just below the confluence with the Little Snake River to the confluence with the Green River. All lakes and reservoirs tributary to the Green River in Colorado, including Hog Lake, except for specific listings in segment 33.			Aq Life Warm 1 Recreation E Agriculture	T=TVS(WL) °C D.O. = 5.0 mg/l pH = 6.5-9.0 E. Coli=126/100ml Chla=20 ug/l (tot) <sup>a</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =100 P=83 ug/l (tot) <sup>a</sup>	As(ac)=340 As(ch)=7.6(Trec) Cd(ac/ch)=TVS CrIII(ac/ch)=TVS CrIII(ch)=100(Trec) CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac/ch)=TVS Zn(ac/ch)=TVS
33. All lakes and reservoirs tributary to Beaver Creek from the source to the confluence with the Green River. All lakes and reservoirs tributary to Vermillion Creek from the Colorado/Wyoming border to a point just below the confluence with Talamantes Creek.			Aq Life Cold 1 Recreation U Water Supply Agriculture	T=TVS(CL) °C D.O. = 6.0 mg/l D.O. (sp)=7.0 mg/l pH = 6.5-9.0 E. Coli=126 /100ml Chla=8 ug/l (tot) <sup>a</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=25 ug/l (tot) <sup>a</sup>	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS

## STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS

REGION:11		Desig	Classifications	NUMERIC STANDARDS						TEMPORARY MODIFICATIONS AND QUALIFIERS
BASIN: White River				PHYSICAL and BIOLOGICAL	INORGANIC mg/l		METALS ug/l			
Stream Segment Description										
1.	All tributaries to the White River, including all wetlands, which are within the boundaries of the Flat Tops Wilderness Area.	OW	Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I) °C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS Zn(ch)=TVS(sc)	
2.	Deleted.									
3.	Mainstem of the North Fork of the White River and mainstem of the White River from the Flat Tops Wilderness Area boundary to a point immediately above the confluence with Miller Creek.		Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I) °C D.O. = 6.0 mg/l D.O.(sp)=7.0 mg/l pH = 6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS Zn(ch)=TVS(sc)	
4a.	All tributaries to the North Fork of the White River, including all wetlands, from the Flat Tops Wilderness Area boundary to the confluence with the South Fork of the White River except for the specific listings in Segment 1 and 4b.		Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I) °C D.O. = 6.0 mg/l D.O. (sp)=7.0 mg/l pH = 6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
4b.	Mainstems of Lost Creek and Snell Creek, including all wetlands and tributaries, from the Flat Tops Wilderness area to the boundary of the White River National Forest.	OW	Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I) °C D.O. = 6.0 mg/l D.O. (sp)=7.0 mg/l pH = 6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
5.	Deleted.									
6.	Mainstem of the South Fork of the White River, including all tributaries and wetlands, from the boundary of the Flat Tops Wilderness Area to the confluence with the North Fork of the White River.		Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I) °C D.O. = 6.0 mg/l D.O.(sp)=7.0 mg/l pH = 6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS Zn(ch)=TVS(sc)	
7.	Mainstem of the White River from a point immediately above the confluence with Miller Creek to a point immediately above the confluence with Piceance Creek.		Aq Life Cold 1 Dec 1 to March 1 Recreation P March 2 to Nov. 30 Recreation E Water Supply Agriculture	T=TVS(CS-II) °C D.O.= 6.0 mg/l D.O.(sp)=7.0 mg/l pH = 6.5-9.0 Dec. 1 to March 1 E.Coli=205/100ml March 2 to Nov. 30 E.Coli=126/100ml Chla=150 mg/m <sup>2 c</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l <sup>c</sup>	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
8.	All tributaries to the White River, including all wetlands, from the confluence of the North and South Forks to a point immediately above the confluence with Piceance Creek, which are within the boundaries of White River National Forest.		Aq Life Cold 1 Recreation P Water Supply Agriculture	T=TVS(CS-I) °C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH = 6.5-9.0 E.Coli=205/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	

# STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS

REGION:11		Desig	Classifications	NUMERIC STANDARDS					TEMPORARY MODIFICATIONS AND QUALIFIERS	
BASIN: White River				PHYSICAL and BIOLOGICAL	INORGANIC mg/l		METALS ug/l			
Stream Segment Description										
9a.	All tributaries to the White River, including all wetlands, from the confluence of the North and South Forks to a point immediately above the confluence with Flag Creek, which are not within the boundary of National Forest lands, except for the specific listings in Segments 9c, 9d and 10b.		Aq Life Cold 2 Recreation N Water Supply Agriculture	T=TVS(CS-I) °C D.O. = 6.0 mg/l D.O. (sp)=7.0 mg/l pH = 6.5-9.0 E.Coli=630/100ml	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l	As(ac)=340 As(ch)=0.02-10(Trec) <sup>A</sup> Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
9b.	All tributaries to the White River, including wetlands, from a point immediately above the confluence with Flag Creek, to a point immediately above the confluence with Piceance Creek, which are not within the boundary of National Forest lands, except for the specific listings in segments 9c and 9d.		Aq Life Cold 2 Recreation N Water Supply Agriculture	T=TVS(CS-II) °C D.O. = 6.0 mg/l D.O. (sp)=7.0 mg/l pH = 6.5-9.0 E.Coli=630/100ml	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l	As(ac)=340 As(ch)=0.02-10(Trec) <sup>A</sup> Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
9c.	Mainstems of Flag Creek, including all tributaries and wetlands, from the source to a point just below the confluence with the East Fork of Flag Creek.		Aq Life Cold 2 6/1 to 8/31 Recreation E 9/1 to 5/31 Recreation N Water Supply Agriculture	T=TVS(CS-I) °C D.O. = 6.0 mg/l D.O. (sp)=7.0 mg/l pH = 6.5-9.0 6/1 to 8/31 E.Coli=126/100ml 9/1 to 5/31 E.Coli=630/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l	As(ac)=340 As(ch)=0.02-10(Trec) <sup>A</sup> Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
9d.	Sulphur Creek, including all tributaries and wetlands, from the source to the confluence with the White River. Flag Creek, including all tributaries and wetlands, from a point just below the confluence with the East Fork of Flag Creek to the confluence with the White River.		Aq Life Cold 2 6/1 to 8/31 Recreation E 9/1 to 5/31 Recreation N Water Supply Agriculture	T=TVS(CS-II) °C D.O. = 6.0 mg/l D.O. (sp)=7.0 mg/l pH = 6.5-9.0 6/1 to 8/31 E.Coli=126/100ml 9/1 to 5/31 E.Coli=630/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l	As(ac)=340 As(ch)=0.02-10(Trec) <sup>A</sup> Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
10a.	All lakes and reservoirs tributary to the White River, from the confluence of the North and South Forks of the White River to a point immediately above the confluence of the White River and Piceance Creek, except for specific listing in Segments 11, 25 and 27.		Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CL) °C D.O. = 6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=8 ug/l <sup>B</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=25 ug/l <sup>B</sup>	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
10b.	Mainstem of Big Beaver Creek, Miller Creek, and North Elk Creek, including their tributaries and wetlands, from their boundary with National Forest lands to their confluences with the White River. Mainstem of Coal Creek, including all tributaries and wetlands, from the source to the confluence with the White River.		Aq Life Cold 1 Recreation P Water Supply Agriculture	T=TVS(CS-I) °C D.O. = 6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=205/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
11.	Rio Blanco Lake and Taylor Draw Reservoir (a.k.a. Kenney Reservoir).		Aq Life Warm 1 Recreation E Water Supply DUWS* Agriculture	T=TVS(WL) °C D.O. = 5.0 mg/l pH = 6.5-9.0 E.Coli=126/100ml Chla=20 ug/l <sup>B</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=83 ug/l <sup>B</sup>	As(ac)=340 As(ch)=0.02(Trec) Cd(ac/ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac/ch)=TVS Zn(ac/ch)=TVS	* Kenney Reservoir = DUWS



# STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS

REGION:11		Desig	Classifications	NUMERIC STANDARDS						TEMPORARY MODIFICATIONS AND QUALIFIERS
BASIN: White River				PHYSICAL and BIOLOGICAL	INORGANIC mg/l		METALS ug/l			
Stream Segment Description										
12.	Mainstem of the White River from a point immediately above the confluence with Piceance Creek to a point immediately above the confluence with Douglas Creek.		Aq Life Warm 1 Recreation E Water Supply Agriculture	T=TVS(WS-II) °C D.O. = 5.0 mg/l pH = 6.5-9.0 E.Coli=126/100ml	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS	As(ac)=340 As(ch)=0.02(Trec) Cd(ac/ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac/ch)=TVS Zn(ac/ch)=TVS	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
13a.	All tributaries to the White River, including all wetlands, from a point immediately below the confluence with Piceance Creek to a point immediately above the confluence with Douglas Creek, except for the specific listings in Segments 13b through 20.	UP	Aq Life Warm 2 Recreation N Agriculture	T=TVS(WS-III) °C D.O. = 5.0 mg/l pH = 6.5-9.0 E.Coli=630/100ml	CN(ac)=0.2 NO <sub>2</sub> =10 NO <sub>3</sub> =100	B=0.75 P=170 ug/l	As(ch)=100(Trec) Be(ch)=100(Trec) Cd(ch)=10(Trec) CrIII(ch)=100(Trec)	CrVI(ch)=100(Trec) Cu(ch)=200(Trec) Pb(ch)=100(Trec) Mn(ch)=200(Trec) Mo(ch)=160(Trec)	Ni(ch)=200(Trec) Se(ch)=20(Trec) Zn(ch)=2000(Trec)	
13b.	Mainstem of Yellow Creek including all wetlands from the source to immediately below the confluence with Barcus Creek. All tributaries to Yellow Creek from the source to the White River, including wetlands.		Aq Life Warm 2 Recreation P Water Supply Agriculture	T=TVS(WS-III) °C D.O. = 5.0 mg/l pH = 6.5-9.0 E. Coli=205/100ml Chla=150 mg/m <sup>2</sup> °C	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=5.0 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=170 ug/l °C	As(ac)=340 As(ch)=0.02-10(Trec)* Cd(ac/ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac/ch)=TVS Zn(ac/ch)=TVS Corral Gulch Se(ch)=5.7* Duck Creek Se (ch)=7.9* Yellow Creek Se(ch)=6.9* Greasewood Creek Se(ch)=6.0*	*See assessment locations at 37.6(4)
13c.	Mainstem of Yellow Creek, including all wetlands from immediately below the confluence with Barcus Creek to the confluence with the White River.		Aq Life Warm 2 Recreation P Agriculture	T=TVS(WS-II) °C D.O. = 5.0 mg/l pH = 6.5-9.0 E. Coli=205/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=5.0 NO <sub>2</sub> =10 NO <sub>3</sub> =100 P=170 ug/l	As(ac)=340 As(ch)=100(Trec) Cd(ac/ch)=TVS CrIII(ac/ch)=TVS CrIII(ch)=100(Trec) CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=1625(Trec)* Pb(ac/ch)=TVS Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac/ch)=TVS Zn(ac/ch)=TVS	*See assessment location at 36.6(4)
13d.	Violett Springs Ponds.		Aq Life Cold 2 Recreation P Agriculture	T=TVS (CL) °C D.O.=6.0 mg/l pH=6.5-9.0 E. Coli=205/100ml Chla=8 ug/l <sup>B</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=5.0 NO <sub>2</sub> =10 NO <sub>3</sub> =100 P=25 ug/l <sup>B</sup>	As(ac)=340 As(ch)=100(Trec) Cd(ac/ch)=TVS CrIII(ac/ch)=TVS CrIII(ch)=100(Trec) CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac/ch)=TVS Zn(ac/ch)=TVS	
14a.	Mainstem of Piceance Creek from the source to a point just below the confluence with Hunter Creek.		Aq Life Cold 1 Recreation P Water Supply Agriculture	T=TVS(CS-I) °C D.O. = 6.0 mg/l D.O.(sp)=7.0 mg/l pH = 6.5-9.0 E.Coli=205/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
14b.	Mainstem of Piceance Creek from a point just below the confluence with Hunter Creek to a point just below the confluence with Ryan Gulch.		Aq Life Cold 1 Recreation P Agriculture	T=TVS(CS-II) °C D.O. = 6.0 mg/l D.O.(sp)=7.0 mg/l pH = 6.5-9.0 E.Coli=205/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =100 P=110 ug/l	As(ac)=340 As(ch)=7.6(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac/ch)=TVS CrIII(ch)=100(Trec) CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
15.	Mainstem of Piceance Creek from a point just below the confluence with Ryan Gulch to the confluence with the White River. The Dry Fork of Piceance Creek, including all tributaries and wetlands, from a point just below the confluence with Little Reigan Gulch to the confluence with Piceance Creek, except for the specific listings in Segment 18.		Aq Life Warm 2 Recreation P Agriculture	T=TVS(WS-II) °C D.O.= 5.0 mg/l pH = 6.5-9.0 E.Coli=205/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =100 Cl=250 P=110 ug/l	As(ac)=340 As(ch)=100(Trec) Cd(ac/ch)=TVS CrIII(ac/ch)=TVS CrIII(ch)=100(Trec) CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac/ch)=TVS Zn(ac/ch)=TVS	

## STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS

REGION:11		Desig	Classifications	NUMERIC STANDARDS					TEMPORARY MODIFICATIONS AND QUALIFIERS	
BASIN: White River				PHYSICAL and BIOLOGICAL	INORGANIC mg/l		METALS ug/l			
Stream Segment Description										
16a. All tributaries to Piceance Creek, including all wetlands, from the source to a point immediately below the confluence with Dry Thirteenmile Creek, except for the specific listings in Segments 15, 17, 18, 19 and 20. Dudley Gulch.			Aq Life Warm 2 Recreation N Water Supply Agriculture	T=TVS(WS-III) °C D.O.= 5.0 mg/l pH = 6.5-9.0 E.Coli=630/100ml	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>3</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l	As(ac)=340 As(ch)=0.02-10(Trec) <sup>A</sup> Cd(ac/ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac/ch)=TVS Zn(ac/ch)=TVS	
16b. All tributaries to Piceance Creek, including all wetlands, from a point immediately below the confluence with Dry Thirteenmile Creek to the confluence with the White River, except for the specific listings in Segments 15, 17, 18, 19 and 20.			Aq Life Warm 2 Recreation N Agriculture	T=TVS(WS-III) °C D.O.= 5.0 mg/l pH = 6.5-9.0 E.Coli=630/100ml	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>3</sub> =0.05 NO <sub>3</sub> =100 Cl=250 P=110 ug/l	As(ac)=340 As(ch)=100(Trec) Cd(ac/ch)=TVS CrIII(ac/ch)=TVS CrIII(ch)=100(Trec) CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac/ch)=TVS Zn(ac/ch)=TVS	
17. Stewart Gulch from the sources of the East Middle, and West Forks to the confluence with Piceance Creek.			Aq Life Cold 2 Recreation P Agriculture	T=TVS(CS-I) °C D.O. = 6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=205/100ml	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>3</sub> =0.05 NO <sub>3</sub> =100 P=110 ug/l (tot)	As(ac)=340 As(ch)=7.6(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac/ch)=TVS CrIII(ch)=100(Trec) CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	Fish Ingestion
18a. Willow and Hunter Creeks, including all tributaries and wetlands, from their sources to their confluences with Piceance Creek.			Aq Life Cold 2 Recreation N Agriculture	T=TVS(CS-II) °C D.O. = 6.0 mg/l D.O.(sp)=7.0 mg/l pH = 6.5-9.0 E.Coli=630/100ml	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>3</sub> =0.05 NO <sub>3</sub> =100 P=110 ug/l (tot)	As(ac)=340 As(ch)=100(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac/ch)=TVS CrIII(ch)=100(Trec) CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
18b. Mainstem of the Dry Fork of Piceance Creek, including all tributaries and wetlands, from the source to a point just below the confluence with Little Reigan Gulch. Box D Gulch from its source to the confluence with the Dry Fork of Piceance Creek.			Aq Life Cold 2 Recreation P Water Supply Agriculture	T=TVS(CS-II) °C D.O. = 6.0 mg/l D.O.(sp)=7.0 mg/l pH = 6.5-9.0 E. Coli=205/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>3</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l	As(ac)=340 As(ch)=0.02-10(Trec) <sup>A</sup> Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
19. Mainstem of Fawn Creek from the source to the confluence with Black Sulphur Creek.			Aq Life Cold 1 Recreation P Agriculture	T=TVS(CS-I) °C D.O. = 6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=205/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>3</sub> =0.05 NO <sub>3</sub> =100 P=110 ug/l (tot)	As(ac)=340 As(ch)=7.6(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac/ch)=TVS CrIII(ch)=100(Trec) CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
20. Mainstems of Black Sulphur Creek including all tributaries and wetlands from the source to the confluence with Piceance Creek.			Aq Life Cold 1 Recreation P Water Supply Agriculture	T=TVS(CS-I) °C D.O. = 6.0 mg/l D.O. (sp)=7.0 mg/l pH = 6.5-9.0 E.Coli=205/100ml	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>3</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02 Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	

# STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS

REGION:11		Desig	Classifications	NUMERIC STANDARDS						TEMPORARY MODIFICATIONS AND QUALIFIERS
BASIN: White River				PHYSICAL and BIOLOGICAL	INORGANIC mg/l	METALS ug/l				
Stream Segment Description										
21.	Mainstem of the White River from a point immediately above the confluence with Douglas Creek to the Colorado/Utah border.		Aq Life Warm 1 Recreation E Water Supply Agriculture	T=TVS(WS-II) °C D.O. = 5.0 mg/l pH = 6.5-9.0 E.Coli=126/100ml	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS	As(ac)=340 As(ch)=0.02(Trec) Cd(ac/ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=100(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac/ch)=TVS Zn(ac/ch)=TVS	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
22.	All tributaries to the White River, including all wetlands, from a point immediately above the confluence with Douglas Creek to the Colorado/Utah border, except for specific listing in Segment 23.		Aq Life Warm 2 Recreation P Agriculture	T=TVS(WS-III) °C D.O. = 5.0 mg/l pH = 6.5-9.0 E.Coli=205/100ml Chla=150 mg/m <sup>2</sup>	CN(ac)=0.2 NO <sub>2</sub> =10 NO <sub>3</sub> =100	B=0.75 P=170 ug/l (tot)	As(ch)=100(Trec) Be(ch)=100(Trec) Cd(ch)=10(Trec) CrIII(ch)=100(Trec)	CrVI(ch)=100(Trec) Cu(ch)=200(Trec) Pb(ch)=100(Trec) Mn(ch)=200(Trec) Mo(ch)=160(Trec)	Ni(ch)=200(Trec) Se(ch)=20(Trec) Zn(ch)=2000(Trec)	
23.	Mainstems of East Douglas Creek and West Douglas Creek, including all tributaries and wetlands, from their sources to their confluence.		Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I) °C D.O.= 6.0 mg/l D.O.(sp)=7.0 mg/l pH = 6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l (tot)	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
24.	All lakes and reservoirs tributary to the White River, which are within the boundaries of the Flat Tops Wilderness Area, including Trappers Lake.	OW	Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CL) °C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=8 ug/l (tot) <sup>8</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=25 ug/l (tot) <sup>8</sup>	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
25.	Lake Avery (a.k.a Big Beaver Reservoir).		Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CLL) °C Apr-Dec T <sub>(WAT)</sub> =20.7 °C <sup>D</sup> D.O. = 6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=8 ug/l (tot) <sup>8</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=25 ug/l (tot) <sup>8</sup>	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
26.	All lakes and reservoirs tributary to the North and South Forks of the White River, from the Flat Tops Wilderness Area boundary to the confluence with the North and South Forks of the White River.		Aq Life Cold 1 Recreation U Water Supply Agriculture	T=TVS(CL) °C D.O. = 6.0 mg/l D.O. (sp)=7.0 mg/l pH = 6.5-9.0 E.Coli=126/100ml Chla=8 ug/l (tot) <sup>8</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=25 ug/l (tot) <sup>8</sup>	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
27.	All lakes and reservoirs tributary to the White River, from a point immediately above the confluence with Piceance Creek to the Colorado/Utah border, except for the specific listings in segments 11 and 13d.		Aq Life Warm 1 Recreation U Agriculture	T=TVS(WL) °C D.O. = 5.0 mg/l pH = 6.5-9.0 E.Coli=126/100ml Chla=20 ug/l (tot) <sup>8</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =100 P=83 ug/l (tot) <sup>8</sup>	As(ac)=340 As(ch)=7.6(Trec) Cd(ac/ch)=TVS CrIII(ac/ch)=TVS CrIII(ch)=100(Trec) CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac/ch)=TVS Zn(ac/ch)=TVS	

# STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS

REGION:11		Desig	Classifications	NUMERIC STANDARDS						TEMPORARY MODIFICATIONS AND QUALIFIERS
BASIN: Lower Colorado River				PHYSICAL and BIOLOGICAL	INORGANIC mg/l		METALS ug/l			
Stream Segment Description										
1.	Mainstem of the Colorado River from the confluence with the Roaring Fork River to immediately below the confluence with Rifle Creek.		Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-II) °C D.O. = 6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21
2a.	Mainstem of the Colorado River from immediately below the confluence with Rifle Creek to immediately above the confluence of Rapid Creek.		Aq Life Warm 1 Recreation E Water Supply Agriculture	T=TVS(WS-II) °C D.O. = 5.0 mg/l pH = 6.5-9.0 E.Coli=126/100ml	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS	As(ac)=340 As(ch)=0.02(Trec) Cd(ac/ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac/ch)=TVS Zn(ac/ch)=TVS	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
2b.	Mainstem of the Colorado River from a point immediately above the confluence with Rapid Creek to immediately above the confluence of the Gunnison River.		Aq Life Warm 1 Recreation E Water Supply Agriculture	T=TVS(WS-II) °C D.O. = 5.0 mg/l pH = 6.5-9.0 E.Coli=126/100ml	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS	As(ac)=340 As(ch)=0.02(Trec) Cd(ac/ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac/ch)=TVS Zn(ac/ch)=TVS	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
3.	Mainstem of the Colorado River from immediately above the confluence of the Gunnison River to the Colorado-Utah state line.		Aq Life Warm 1 Recreation E Agriculture	T=TVS(WS-II) °C D.O. =5.0 mg/l pH = 6.5-9.0 E.Coli=126/100ml	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =100	As(ac)=340 As(ch)=7.6(Trec) Cd(ac/ch)=TVS CrIII(ac/ch)=TVS CrIII(ch)=100(Trec) CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac/ch)=TVS Zn(ac/ch)=TVS	
4a.	All tributaries, including wetlands, to the Colorado River from the confluence with the Roaring Fork River to a point immediately below the confluence with Parachute Creek except for the specific listings in Segments 4b, 4c, 4d, 4e, 5, 6, 7a, 7b, 8, 9a, 9c, 10, 11a - h, and 12a.		Aq Life Cold 2 Recreation N Water Supply Agriculture	T=TVS(CS-II) °C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=630/100ml	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l	As(ac)=340 As(ch)=0.02-10(Trec) <sup>A</sup> Cd(ac/ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac/ch)=TVS Zn(ac/ch)=TVS	
4b.	South Canyon Hot Springs.		Aq Life Warm 2 Recreation E	D.O.=5.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 P=170 ug/l	As(ac)=340 As(ch)=100(Trec) Cd(ac/ch)=TVS CrIII(ac/ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Hg(ch)=0.01(tot)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac/ch)=TVS Zn(ac/ch)=TVS	
4c.	The mainstem of South Canyon Creek from the South Canyon Hot Springs to the confluence with the Colorado River.		Aq Life Warm 1 Recreation E Water Supply Agriculture	T=TVS(WS-III) °C D.O.=5.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup> °C	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=170 ug/l	As(ac)=340 As(ch)=0.02(Trec) Cd(ac/ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac/ch)=TVS Zn(ac/ch)=TVS	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
4d.	The mainstem of Dry Hollow Creek, including all tributaries and wetlands, from the source to the confluence with the Colorado River.		Aq Life Cold 2 Recreation N Water Supply Agriculture	T=TVS(CS-II) °C D.O.= 5.0 mg/l pH=6.5-9.0 E.Coli=630/100ml	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l	As(ac)=340 As(ch)=0.02-10(Trec) <sup>A</sup> Cd(ac/ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac/ch)=TVS Zn(ac/ch)=TVS	

# STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS

REGION:11		Desig	Classifications	NUMERIC STANDARDS						TEMPORARY MODIFICATIONS AND QUALIFIERS
BASIN: Lower Colorado River				PHYSICAL and BIOLOGICAL	INORGANIC mg/l		METALS ug/l			
Stream Segment Description										
4e. Mainstem of Dry Creek including all tributaries and wetlands from the source to immediately above the Last Chance Ditch.		UP	Aq Life Cold 2 Recreation N Agriculture	T=TVS(CS-II) °C D.O.=5.0 mg/l pH=6.5-9.0 E.Coli=630/100ml	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =100 P=110 ug/l <sup>c</sup>	As(ac)=340 As(ch)=100(Trec) Cd(ac/ch)=TVS CrIII(ac/ch)=TVS CrIII(ch)=100(Trec) CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac/ch)=TVS Zn(ac/ch)=TVS	Temporary Modifications: Cu(ac/ch)=current conditions Expiration 6/30/2017 Fe(ch)=current conditions Expiration 6/30/2015
4f. Mainstem of Dry Creek including all tributaries and wetlands from a point immediately above the Last Chance Ditch to the confluence with the Colorado River.			Aq Life Cold 1 Recreation N Agriculture	T=TVS(CS-II) °C D.O.=6.0 mg/l pH=6.5-9.0 E.Coli=630/100ml	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =100 P=110 ug/l <sup>c</sup>	As(ac)=340 As(ch)= 7.6(Trec) Cd(ac/ch)=TVS CrIII(ac/ch)=TVS CrIII(ch)=100(Trec) CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac/ch)=TVS Zn(ac/ch)=TVS	
5. All tributaries to the Colorado River, including wetlands, which are within the boundaries of White River National Forest, except for the specific listing in Segments 9a and 9c.			Aq Life Cold 1 Recreation P Water Supply Agriculture	T=TVS(CS-I) °C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=205/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
6. Mainstem of Oasis Creek including all tributaries and wetlands from the boundary of White River National Forest to the confluence with the Colorado River.			Aq Life Cold 2 Recreation P Water Supply Agriculture	T=TVS(CS-I) °C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=205/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l	As(ac)=340 As(ch)=0.02-10(Trec) <sup>a</sup> Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
7a. Mainstem of Mitchell, Canyon, Elk, Garfield, Beaver, and Cache Creeks, including all tributaries and wetlands, from the boundary of the White River National Forest to their confluences with the Colorado River. Battlement Creek from the most downstream boundary of BLM lands to the confluence with the Colorado River.			Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I) °C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup> <sup>c</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l <sup>c</sup>	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
7b. Mainstem of Divide Creek, including all tributaries and wetlands, from the boundary of the White River National Forest to the confluence with the Colorado River.			Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-II) °C D.O.= 6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
8. Mainstem of Northwater and Trapper Creeks, including all tributaries and wetlands, from their sources to the confluence with the East Middle Fork of Parachute Creek. East Middle Fork of Parachute Creek, including all tributaries and wetlands, from the source to the confluence with the Middle Fork of Parachute Creek.		OW	Aq Life Cold 1 Recreation P Water Supply Agriculture	T=TVS(CS-I) °C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=205/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
9a. Middle Rifle Creek, including all tributaries and wetlands, from its source to the confluence with West Rifle Creek. East Rifle Creek, including all tributaries and wetlands, from the source to the boundary of the White River National Forest.			Aq Life Cold 1 Recreation E Agriculture	T=TVS(CS-I) °C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =100 P=110 ug/l	As(ac)=340 As(ch)=7.6(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac/ch)=TVS CrIII(ch)=100(Trec) CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	

# STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS

REGION:11		Desig	Classifications	NUMERIC STANDARDS					TEMPORARY MODIFICATIONS AND QUALIFIERS	
BASIN: Lower Colorado River				PHYSICAL and BIOLOGICAL	INORGANIC mg/l		METALS ug/l			
Stream Segment Description										
9b.	All lakes and reservoirs tributary to the Colorado River from the confluence of the Colorado and the Roaring Fork River to a point immediately below the confluence of the Colorado River and Parachute Creek, and all lakes and reservoirs within the White River National Forest or the Grand Mesa National Forest, except for the specific listing in segment 20.		Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CL) °C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=8 ug/l <sup>B</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=25 ug/l <sup>B</sup>	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
9c.	Battlement Creek, including all tributaries and wetlands, from the source to the most downstream boundary of BLM lands.	OW	Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I) °C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
10.	West Rifle Creek, including all tributaries and wetlands, from the source to Rifle Gap Reservoir. East Rifle Creek, including all tributaries and wetlands, from the White River National Forest boundary to Rifle Gap Reservoir. Rifle Creek, including all tributaries and wetlands, from Rifle Gap Reservoir to the confluence with the Colorado River.		Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-II) °C D.O.=6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21
11a.	Mainstem of the West Fork of Parachute Creek, including all tributaries, from its source to West Fork Falls. Mainstem of East Fork of Parachute Creek, including all tributaries and wetlands, from a point immediately below the mouth of First Anvil Creek to the east boundary line of S27, T5S, R95W.		Aq Life Cold 1 Recreation N Water Supply Agriculture	T=TVS(CS-I) °C D.O. = 6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=630/100ml	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
11b.	Mainstem of the West Fork of Parachute Creek from West Fork Falls to the confluence with Parachute Creek; mainstem of the Middle Fork of Parachute Creek, including all tributaries, from the source to the confluence with East Middle Fork of Parachute Creek.		Aq Life Cold 1 Recreation N Agriculture	T=TVS(CS-I) °C D.O. = 6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=630/100ml	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =100 P=110 ug/l	As(ac)=340 As(ch)=7.6(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac/ch)=TVS CrIII(ch)=100(Trec) CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
11c.	Deleted.									
11d.	Mainstem of Middle Fork of Parachute Creek from the confluence with East Middle Fork to a point immediately above the confluence with the West Fork of Parachute Creek.		Aq Life Cold 1 Recreation N Agriculture	T=TVS(CS-I) °C D.O. = 6.0 mg/l D.O.(sp)=7.0 mg/l pH = 6.5-9.0 E.Coli=630/100m	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =100 P=110 ug/l	As(ac)=340 As(ch)=7.6(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac/ch)=TVS CrIII(ch)=100(Trec) CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
11e.	That portion of the mainstem of the East Fork of Parachute Creek, including all tributaries and wetlands, within Sections 27, 28, and 29, T5S, R95W.		Aq Life Cold 2 Recreation N Water Supply Agriculture	T=TVS(CS-I) °C D.O. = 6.0 mg/l D.O. (sp)=7.0 mg/l pH = 6.5-9.0 E.Coli=630/100m	CN(ac)=0.2 NO <sub>2</sub> =1.0 NO <sub>3</sub> =10	S=0.002 B=0.75 Cl=250 SO <sub>4</sub> =WS P=110 ug/l	As(ch)=0.02-10(Trec) <sup>A</sup> Be(ac)=4.0(Trec) Cd(ac)=5.0(Trec) CrIII(ac)=50(Trec)	CrVI(ch)=50(Trec) Cu(ch)=200(Trec) Fe(ch)=WS(dis) Pb(ac)=50(Trec) Mn(ch)=WS(dis) Mn(ch)=200(Trec) Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ch)=100(Trec) Se(ch)=20(Trec) Ag(ac)=100(Trec) Zn(ch)=2000(Trec)	

# STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS

REGION:11		Desig	Classifications	NUMERIC STANDARDS					TEMPORARY MODIFICATIONS AND QUALIFIERS	
BASIN: Lower Colorado River				PHYSICAL and BIOLOGICAL	INORGANIC mg/l		METALS ug/l			
Stream Segment Description										
11f.	Mainstem of the East Fork of Parachute Creek from the west boundary line of S29, T5S, R95W to the confluence with Middle Fork of Parachute Creek.		Aq Life Cold 1 Recreation N Water Supply Agriculture	T=TVS(CS-I) °C D.O. = 6.0 mg/l D.O.(sp)=7.0 mg/l pH = 6.5-9.0 E.Coli=630/100ml	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
11g.	All tributaries to East Fork Parachute Creek on the south side of the East Fork Parachute Creek from a point immediately below First Anvil Creek to the confluence with Parachute Creek; all tributaries to Parachute Creek on the east side of Parachute Creek from a point immediately below the East Fork of Parachute Creek to the confluence with the Colorado River; and all tributaries to the Colorado River on the north side of the Colorado River from a point immediately below Cottonwood Creek to the confluence with Parachute Creek except for specific listings in segment 7a and 9c.		Aq Life Cold 2 Recreation N Agriculture	T=TVS(CS-I) °C D.O. = 6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=630/100ml	CN(ac)=0.2 NO <sub>2</sub> =10 NO <sub>3</sub> =100	B=0.75 P=110 ug/l	As(ch)=100(Trec) Be(ch)=100(Trec) Cd(ch)=10(Trec) CrIII(ch)=100(Trec)	CrVI(ch)=100(Trec) Cu(ch)=200(Trec) Pb(ch)=10(Trec) Mn(ch)=200(Trec) Mo(ch)=160(Trec)	Ni(ch)=200(Trec) Se(ch)=20(Trec) Zn(ch)=2000(Trec)	
11h.	Mainstem of Parachute Creek, including all tributaries and wetlands, from the confluence of the West and East Forks to the confluence with the Colorado River except for specific listings in segment 11g.		Aq Life Cold 1 Recreation P Water Supply Agriculture	T=TVS(CS-II) °C D.O. = 6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=205/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l	As(ac)=340 As(ch)=0.02 Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21
12a.	All tributaries to East Fork Parachute Creek from its source to a point immediately below the mouth of First Anvil Creek.		Aq Life Cold 1 Recreation N Agriculture	T=TVS(CS-I) °C D.O. = 6.0 mg/l D.O.(sp)=7.0 mg/l pH = 6.5-9.0 E.Coli=630/100ml	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =100 P=110 ug/l	As(ac)=340 As(ch)=7.6(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac/ch)=TVS CrIII(ch)=100(Trec) CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
12b.	All tributaries and wetlands to the Colorado River from a point immediately below the confluence of Parachute Creek to a point immediately below the confluence with Roan Creek, except for the specific listings in segments 14a, 14b and 14c.		Aq Life Cold 2 Recreation P Water Supply Agriculture	T=TVS(CS-II) °C D.O. = 6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=205/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l	As(ac)=340 As(ch)=0.02-10(Trec) <sup>A</sup> Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
13a.	All tributaries to the Colorado River including wetlands, from a point immediately below the confluence of Roan Creek to the Colorado/Utah border except for the specific listings in Segments 13b through 19.	UP	Aq Life Warm 2 Recreation P Agriculture	T=TVS(WS-III) °C D.O.= 5.0 mg/l pH = 6.5-9.0 E.Coli=205/100ml Chla=150 mg/m <sup>2</sup>	CN(ac)=0.005 NO <sub>2</sub> =10 NO <sub>3</sub> =100 NH <sub>3</sub> (ac/ch)=TVS	S=0.002 B=0.75 P=170 ug/l	CrIII(ch)=100(Trec) As(ch)=100(Trec) Cd(ac/ch)=TVS CrIII(ac/ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Hg(ac)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac/ch)=TVS Zn(ac/ch)=TVS	
13b.	All tributaries to the Colorado River, including wetlands, from the Government Highline Canal Diversion to a point immediately below Salt Creek, and downgradient from the Government Highline Canal, the Orchard Mesa Canal No. 2, Orchard Mesa Drain, Stub Ditch and the northeast Colorado National Monument boundary.	UP	Aq Life Warm 2 Recreation E Agriculture	T=TVS(WS-II) °C D.O.= 5.0 mg/l pH = 6.5-9.0 E.Coli=126/100ml Chla=150 mg/m <sup>2</sup> C	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =100 P=170 ug/l C	As(ac)=340 As(ch)=100(Trec) Cd(ac/ch)=TVS CrIII(ac/ch)=TVS CrIII(ch)=100(Trec) CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac/ch)=TVS Zn(ac/ch)=TVS	
13c.	Walker Wildlife Area Ponds.		Aq Life Warm 1 Recreation E Agriculture	T=TVS(WL) °C D.O.= 5.0 mg/l pH = 6.5-9.0 E.Coli=126/100ml Chla=20 ug/l <sup>B</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =100 P=83 ug/l <sup>B</sup>	As(ac)=340 As(ch)=7.6(Trec) Cd(ac/ch)=TVS CrIII(ac/ch)=TVS CrIII(ch)=100(Trec) CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac/ch)=TVS Zn(ac/ch)=TVS	

# STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS

REGION:11		Desig	Classifications	NUMERIC STANDARDS						TEMPORARY MODIFICATIONS AND QUALIFIERS
BASIN: Lower Colorado River				PHYSICAL and BIOLOGICAL	INORGANIC mg/l		METALS ug/l			
Stream Segment Description										
13d.	Coal Canyon Creek downgradient of the Government Highline Canal.		Aq Life Warm 2 Recreation P Agriculture	T=TVS(WS-II) °C D.O. = 5.0 mg/l pH = 6.5-9.0 E. Coli=205/100ml Chla=150 mg/m²	NH₃(ac/ch)=TVS Cl₂(ac)=0.019 Cl₂(ch)=0.011 CN=0.005	S=0.002 B=5.0 NO₂=10 NO₃=100 P=170 ug/l	As(ac)=340 As(ch)=100(Trec) Cd(ac/ch)=TVS CrIII(ac/ch)=TVS CrIII(ch)=100(Trec) CrVI(ac/ch)=TVS Cu(ac)=0.96e <sup>(0.9801 [ln(hard)]-1.4747)</sup> Cu(ch)=0.96e <sup>(0.5897 [ln(hard)]-0.3193)</sup>	Fe(ch)=1000 Pb(ac/ch)=TVS Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac/ch)=TVS Zn(ac/ch)=TVS	
13e.	All tributaries to the Colorado River, from Lewis Wash to the West Salt Creek drainage, from an elevation of 5,200 feet to the Government Highline Canal, excluding the mainstems of Big Salt Wash, East Salt Creek and West Salt Creek.	UP	Aq Life Warm 2 Recreation P Agriculture	T=TVS(WS-III) °C D.O.=5.0 mg/l pH=6.5-9.0 E.coli=205/100ml Chla=150 mg/m²	NO₂=10 NO₃=100	B=0.75 CN(ac)=0.2 P=170 ug/l	As(ch)=100 (Trec) Be(ch)=100(Trec) Cd(ch)=10 (Trec) CrIII(ch)=100 (Trec) CrVI(ch)=100 (Trec)	Cu(ch)=200(Trec) Pb(ch)=100(Trec) Mn(ch)=200(Trec) Mo(ch)=160(Trec) Ni(ch)=200(Trec)	Se(ch)=20 (Trec) Zn(ch)=2000 (Trec)	
13f.	Asbury Creek and Sand Wash from their sources to their confluences with the Colorado River.	UP	Aq Life Warm 2 Recreation P Water Supply Agriculture	T=TVS(WS-III) °C D.O.= 5.0 mg/l pH = 6.5-9.0 E.Coli=205/100ml Chla=150 mg/m²	NH₃(ac/ch)=TVS Cl₂(ac)=0.019 Cl₂(ch)=0.011 CN=0.005	S=0.05 B=0.75 NO₂=0.05 NO₃=10 Cl=250 SO₄=WS P=170 ug/l	As(ac)=340 As(ch)=0.02-10(Trec)* Cd(ac/ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ac)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac/ch)=TVS Zn(ac/ch)=TVS	
14a.	Mainstem of Roan Creek including all wetlands and tributaries, from its source to a point immediately above the confluence with Clear Creek, except for the specific listing in segment 14b. Clear Creek, including all tributaries and wetlands, from the source to a point immediately below the confluence with Tom Creek.		Aq Life Cold 1 Recreation P Water Supply Agriculture	T=TVS(CS-I) °C D.O.=6.0 mg/l D.O.(sp)= 7.0 mg/l pH=6.5-9.0 E.Coli=205/100ml Chla=150 mg/m²	NH₃(ac/ch)=TVS Cl₂(ac)=0.019 Cl₂(ch)=0.011 CN=0.005	S=0.002 B=0.75 NO₂=0.05 NO₃=10 Cl=250 SO₄=WS P=110 ug/l	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
14b.	Clear Creek, including all tributaries and wetlands, from a point immediately below the confluence with Tom Creek to the confluence with Roan Creek. Roan Creek, including all tributaries and wetlands, from a point immediately above the confluence with Clear Creek to a point immediately below the confluence with Kimball Creek.		Aq Life Cold 1 Recreation P Water Supply Agriculture	T=TVS(CS-II) °C D.O.=6.0 mg/l D.O.(sp)= 7.0 mg/l pH=6.5-9.0 E.Coli=205/100ml Chla=150 mg/m²	NH₃(ac/ch)=TVS Cl₂(ac)=0.019 Cl₂(ch)=0.011 CN=0.005	S=0.002 B=0.75 NO₂=0.05 NO₃=10 Cl=250 SO₄=WS P=110 ug/l	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
14c.	Mainstem of Roan Creek including all tributaries and wetlands, from a point immediately below the confluence with Kimball Creek to the confluence with the Colorado River.		Aq Life Warm 1 Recreation P Water Supply Agriculture	T=TVS(WS-II) °C D.O.=5.0 mg/l pH=6.5-9.0 E.Coli=205/100ml Chla=150 mg/m²	NH₃(ac/ch)=TVS Cl₂(ac)=0.019 Cl₂(ch)=0.011 CN=0.005	S=0.002 B=0.75 NO₂=0.05 NO₃=10 Cl=250 SO₄=WS P=170 ug/l	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac/ch)=TVS Zn(ac/ch)=TVS	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
15a.	Mainstem of Plateau Creek from its source to the inlet of Vega Reservoir. All tributaries and wetlands to Plateau Creek from its source to a point immediately above the confluence with Buzzard Creek. Kimball Creek, Grove Creek, Big Creek, Cottonwood Creek, Bull Creek, Spring Creek, Coon Creek, and Mesa Creek, including all wetlands and tributaries, from their sources to their confluences with Plateau Creek. The mainstem of Buzzard Creek, including all tributaries and wetlands, within the Grand Mesa National Forest.		Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-I) °C D.O.=6.0 mg/l D.O.(sp)= 7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m² <sup>c</sup>	NH₃(ac/ch)=TVS Cl₂(ac)=0.019 Cl₂(ch)=0.011 CN=0.005	S=0.002 B=0.75 NO₂=0.05 NO₃=10 Cl=250 SO₄=WS P=110 ug/l <sup>c</sup>	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.



# STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS

REGION:11		Desig	Classifications	NUMERIC STANDARDS						TEMPORARY MODIFICATIONS AND QUALIFIERS
BASIN: Lower Colorado River				PHYSICAL and BIOLOGICAL	INORGANIC mg/l		METALS ug/l			
Stream Segment Description										
15b.	All tributaries and wetlands to Buzzard Creek from the Grand Mesa National Forest boundary to the confluence with Plateau Creek.		Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-II) °C D.O.=6.0 mg/l D.O.(sp)= 7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m²	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
15c.	Mainstem of Plateau Creek from the outlet of Vega Reservoir to a point immediately below the confluence with Buzzard Creek.		Aq Life Cold 1 Recreation E Water Supply Agriculture	Apr-Sept DM = 27.3°C MWAT = 21.6°C Oct DM = 15.7°C MWAT = 11.2°C Nov-Mar DM=14.1°C D.O.=6.0 mg/l D.O.(sp)= 7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m² °C	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l <sup>c</sup>	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
15d.	Mainstem of Buzzard Creek from the Grand Mesa National Forest boundary to its confluence with Plateau Creek.		Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CS-II) °C Apr-Oct DM = 25.1°C MWAT=18.9°C D.O.=6.0 mg/l D.O.(sp)= 7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m²	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l	As(ac)=340 As(ch)=0.02(Trec) Cd(ac/ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac/ch)=TVS Zn(ac/ch)=TVS	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
16.	Plateau Creek including all tributaries and wetlands, from a point immediately below the confluence with Buzzard Creek, to the confluence with the Colorado River, excluding specific listings in segment 15.		Aq Life Warm 1 Recreation E Water Supply Agriculture	T=TVS(WS-II) °C March – Nov DM = 31.0°C D.O.=6.0 mg/l D.O.(sp)= 7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=150 mg/m² °C	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l <sup>c</sup>	As(ac)=340 As(ch)=0.02(Trec) Cd(ac/ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac/ch)=TVS Zn(ac/ch)=TVS	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
17a.	Mainstem of Rapid Creek, including all tributaries and wetlands, from its source to a point immediately below the confluence with Cottonwood Creek including Kruzen Springs.	OW	Aq Life Cold 1 Recreation P Water Supply Agriculture	T=TVS(CS-II) °C D.O. = 6.0 mg/l D.O.(sp)=7.0 mg/l pH = 6.5-9.0 E.Coli=205/100ml Chla=150 mg/m²	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21
17b.	Rapid Creek, including all tributaries and wetlands, from a point immediately below the confluence with Cottonwood Creek to the confluence with the Colorado River.		Aq Life Cold 1 Recreation P Water Supply Agriculture	T=TVS(CS-II) °C D.O. = 6.0 mg/l D.O.(sp)=7.0 mg/l pH = 6.5-9.0 E.Coli=205/100ml Chla=150 mg/m²	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	

## STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS

REGION:11		Desig	Classifications	NUMERIC STANDARDS						TEMPORARY MODIFICATIONS AND QUALIFIERS
BASIN: Lower Colorado River				PHYSICAL and BIOLOGICAL	INORGANIC mg/l		METALS ug/l			
Stream Segment Description										
18.	Mainstem of Little Dolores River, including all tributaries and wetlands, from its source to immediately below the confluence with Hay Press Creek.		Aq Life Cold 1 Recreation P Water Supply Agriculture	May-Sept T <sub>(DM)</sub> =24.4 °C T <sub>(MWAT)</sub> =TVS(CS-I) °C Oct-Apr T <sub>(DM)</sub> =13.9 °C T <sub>(MWAT)</sub> =TVS(CS-I) °C D.O. = 6.0 mg/l D.O.(sp)=7.0 mg/l pH = 6.5-9.0 E.Coli=205/100ml Chla=150 mg/m <sup>2</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=110 ug/l	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.
19.	All lakes and reservoirs tributary to the Colorado River from a point immediately below the confluence of the Colorado River and Parachute Creek to the Colorado-Utah border, except for specific listings in segments 9b, 13c, 20, and 21. This segment includes Highline Reservoir.		Aq Life Warm 1 Recreation E Agriculture	T=TVS(WL) °C D.O.=5.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=20 ug/l <sup>B</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =100 P=83 ug/l <sup>B</sup>	As(ac)=340 As(ch)=7.6(Trec) Cd(ac/ch)=TVS CrIII(ac/ch)=TVS CrIII(ch)=100(Trec) CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac/ch)=TVS Zn(ac/ch)=TVS	
20.	Rifle Gap Reservoir, Harvey Gap Reservoir, and Vega Reservoir.		Aq Life Cold 1 Recreation E Water Supply Agriculture	T=TVS(CLL) °C Rifle Gap Reservoir April-Dec T <sub>(WAT)</sub> =23.0 °C <sup>D</sup> Vega Reservoir April-Dec T <sub>(WAT)</sub> =21.5 °C <sup>D</sup> D.O.= 6.0 mg/l D.O.(sp)=7.0 mg/l pH=6.5-9.0 E.Coli=126/100ml Chla=8 ug/l <sup>B</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=25 ug/l <sup>B</sup>	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	
21.	All lakes and reservoirs tributary to Roan Creek from the source to a point just below the confluence with Clear Creek. All lakes and reservoirs tributary to Rapid Creek from the source to the confluence with the Colorado River. All lakes and reservoirs tributary to the Little Dolores River from the source to a point immediately below the confluence with Hay Press Creek. All lakes and reservoirs tributary to Plateau Creek and within the Grand Mesa National Forest.		Aq Life Cold 1 Recreation U Water Supply DUWS* Agriculture	T=TVS(CL) °C D.O. = 6.0 mg/l D.O.(sp)=7.0 mg/l pH = 6.5-9.0 E.Coli=126/100ml Chla 8 ug/l <sup>B</sup>	NH <sub>3</sub> (ac/ch)=TVS Cl <sub>2</sub> (ac)=0.019 Cl <sub>2</sub> (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO <sub>2</sub> =0.05 NO <sub>3</sub> =10 Cl=250 SO <sub>4</sub> =WS P=25 ug/l <sup>B</sup>	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ch)=WS(dis) Mn(ac/ch)=TVS Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	* Jerry Creek Reservoir Number 1 and Number 2 = DUWS *Palisade Cabin Reservoir = DUWS

### STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS – FOOTNOTES

- (A) Whenever a range of standards is listed and referenced to this footnote, the first number in the range is a strictly health-based value, based on the Commission's established methodology for human health-based standards. The second number in the range is a maximum contaminant level, established under the federal Safe Drinking Water Act that has been determined to be an acceptable level of this chemical in public water supplies, taking treatability and laboratory detection limits into account. Control requirements, such as discharge permit effluent limitations, shall be established using the first number in the range as the ambient water quality target, provided that no effluent limitation shall require an "end-of-pipe" discharge level more restrictive than the second number in the range. Water bodies will be considered in attainment of this standard, and not included on the Section 303(d) List, so long as the existing ambient quality does not exceed the second number in the range.
- (B) Total phosphorus (TP) and chlorophyll a standards apply only to lakes and reservoirs larger than 25 acres surface area.
- (C) Total phosphorus and chlorophyll a standards apply only above the facilities listed at 37.5(4),

## **STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS**

- (D) Assessment of adequate refuge shall rely on the Cold Large Lake table value temperature criterion and applicable dissolved oxygen standard rather than the site-specific temperature standard.

**John W. Suthers**

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**State of Colorado  
Department of Law**

**Office of the Attorney General**

Tracking number: 2014-00094

**Opinion of the Attorney General rendered in connection with the rules adopted by the  
Water Quality Control Commission (1002 Series)**

**on 08/11/2014**

**5 CCR 1002-37**

**REGULATION NO. 37 - CLASSIFICATIONS AND NUMERIC STANDARDS FOR LOWER  
COLORADO RIVER BASIN**

The above-referenced rules were submitted to this office on 08/12/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

August 20, 2014 16:11:55

A handwritten signature in black ink, appearing to read "JWS", is shown within a rectangular box.

**John W. Suthers**

Attorney General

by Daniel D. Domenico

Solicitor General

## **Permanent Rules Adopted**

### **Department**

Department of Public Health and Environment

### **Agency**

Water Quality Control Commission (1002 Series)

### **CCR number**

5 CCR 1002-53

### **Rule title**

5 CCR 1002-53 REGULATION NO. 53 - DOMESTIC WASTEWATER TREATMENT  
GRANT FUNDING SYSTEM 1 - eff 09/30/2014

### **Effective date**

09/30/2014

# DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

## Water Quality Control Commission

5 CCR 1002-55

### STATE FUNDED WATER AND WASTEWATER INFRASTRUCTURE PROGRAMS

#### REGULATION NO. 55

##### 55.1 AUTHORITY, SCOPE AND PURPOSE

###### (1) Water Quality Improvement Fund

House Bill 06-1337 created the Water Quality Improvement Fund codified in section 25-8-608, C.R.S., of the Colorado Water Quality Control Act. House Bill 11-1026 amended the statute to authorize grants for stormwater management training and best practices training to prevent or reduce the pollution of state waters. Section 25-8-608(1.7)(c), C.R.S. provides the Water Quality Control Commission ("commission") with the authority to promulgate, implement and administer this regulation.

Funding is dependent upon annual appropriations by the Colorado General Assembly and is based on violations that were committed on or after May 26, 2006. The resulting penalties collected by the Water Quality Control Division ("division") are transmitted to the state treasurer for deposit to the credit of the fund.

The purpose of the fund is to improve water quality in Colorado by providing grant funds for water quality improvement projects using civil penalties from water quality violations.

###### (2) Nutrients Management Grant Fund

During the 2013 legislative session the General Assembly created a new program under House Bill 13-1191 entitled the Nutrient Grant Fund. Codified in section 25-8-608.5, C.R.S., HB 13-1191 authorizes the commission to promulgate rules necessary to administer the program as an amendment to Regulation #55, the Water Quality Improvement Fund.

The purpose of the fund is to provide assistance to Phase One Domestic Wastewater Treatment Works as defined in Regulation #85.

###### (3) Natural Disaster Grant Fund

House Bill 14-1002 created the Natural Disaster Grant Fund to be codified in section 25-8-608.7, C.R.S. – concerning the establishment of a grant program under the Colorado Water Quality Control Act to repair water infrastructure impacted by a natural disaster. The purpose of the fund is to award grants to local governments, including local governments accepting grants on behalf of and in coordination with not-for-profit public water systems, under rules promulgated by the commission for the planning, design, construction, improvement, renovation or reconstruction of domestic wastewater treatment works and public drinking water systems that have been impacted, damaged or destroyed in connection with a natural disaster. The division may only award grants to be used in counties for which the governor has declared a disaster emergency by executive order or proclamation under section 24-33.5-704, C.R.S.

Section 25-8-608.7(3), C.R.S. provides the Water Quality Control Commission with the authority to promulgate rules necessary to implement and administer the Natural Disaster Grant Fund.

(4) Small Communities Water and Wastewater Grant Fund

Senate Bill 14-025 revised and consolidated the Small Communities Water and Wastewater Grant Fund to be codified in section 25-1.5-208, C.R.S. – concerning the establishment of a grant program under the Colorado Water Quality Control Act to assist suppliers of water and domestic wastewater treatment works that serve a population of not more than five thousand people with meeting their responsibilities with respect to the protection of public health and water quality.

Continuous funding for the Small Communities Water and Wastewater Grant Fund is provided in section 39-29-109(2)(a)(III) C.R.S., through money transferred to the fund pursuant to section 39-29-109(2)(a)(II) C.R.S. and any other moneys transferred to the fund by the General Assembly. Moneys for the fund originate from the severance tax perpetual base fund, up to \$10 million, and will be applied to both drinking water projects and wastewater projects.

Section 25-1.5-208(2), C.R.S. provides the commission with the authority to promulgate rules necessary to implement and administer the Small Communities Water and Wastewater Grant Program.

**55.2 DEFINITIONS**

- (1) "Beneficial Use" - means the use of water treatment plant sludge in conjunction with wastewater treatment plant sludge to act as a soil conditioner or low grade fertilizer for the promotion of vegetative growth on land and that meets the requirements of the state Biosolids Regulations.
- (2) "Best Management Practices" - means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of "state waters". Best Management Practices also include treatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.
- (3) "Consolidation" - means 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 division to guarantee the facilities will consolidate.
- (4) "Governmental Agency" – means any municipality, regional commission, county (or county on behalf of unincorporated areas), metropolitan district offering sanitation service, sanitation district used for funding a domestic wastewater treatment works project, water and sanitation district, water conservancy district, metropolitan sewage disposal district, other special district used for funding a project under this regulation.
- (5) "Impacted Water Body" – means a water body in which the designated use(s) of recreation, aquatic life, water supply, agriculture, and/or wetlands have been affected by pollutants associated with a violation of the Act, permit, control regulation, or final cease and desist order or clean-up order.
- (6) "Nonpoint source" – means a diffused pollution source that is not regulated as a point source, including, but not limited to, sources that are often associated with agriculture, inactive or abandoned mining, silviculture, urban runoff, or runoff from construction activities. Nonpoint source pollution does not emanate from a discernible, confined, and discrete conveyance (such as a single pipe) but generally results from land runoff, precipitation, atmospheric deposition, or percolation.
- (7) "Pollution" – means the man-made, man-induced, or natural alteration of the physical, chemical, biological, and radiological integrity of water.

- (8) “Waterborne Disease Outbreak” – means the significant occurrence of acute infectious illness, epidemiologically associated with the ingestion of water from a public water system which is deficient in treatment, as determined by the appropriate local or State agency.

### **55.3 WATER QUALITY IMPROVEMENT FUND CRITERIA**

(1) Entity Eligibility

Entities eligible for grants include: 1) governmental agencies; 2) publicly owned water systems; 3) private not- for- profit public water systems; 4) not- for- profit watershed groups; 5) not- for- profit stormwater program administrator in accordance with 25-8-802 C.R.S.; 6) not- for- profit training provider; and 7) private landowners impacted by a water quality violation.

Entities who pay a Colorado Water Quality Control Act civil penalty are prohibited from receiving a grant from this fund for a period of 5 years from the date of the payment of the penalty.

(2) Project Eligibility

As provided for under section 25-8-608 (1.7) (a), C.R.S., the fund will provide grants to the following project categories:

Category 1 – Stormwater management training and best management practices training to reduce the pollution of state waters.

Category 2 - Projects that improve the water quality in the community or water body which has been impacted by a water quality violation that resulted in a penalty being imposed.

Category 3 – Planning, design, construction, or repair of stormwater projects and domestic wastewater treatment facilities identified on the current fiscal year’s Water Pollution Control Revolving Fund Intended Use Plan.

Category 4 - Nonfederal match funding for the current fiscal year’s nonpoint source projects as approved by the commission.

(3) Funding Allocation

All civil penalties collected by the division shall be transmitted to the state treasurer for deposit to the credit of the fund created by section 25-8-502, C.R.S., for violations committed on or after May 26, 2006 and shall be subject to annual appropriations by the Colorado General Assembly. The division will post on its web page a list of violators that have paid into the Water Quality Improvement Fund. The following allocations from the fund will be made:

Category 1 – for State Fiscal Year 2012-2013 the division will allocate up to \$150,000 of available funds with no one project initially receiving more than \$50,000. If the entire \$150,000 has not been fully utilized, the division will allocate the remaining Category 1 funds within the year per its prioritization procedures to eligible Category 1 project(s) which may result in certain projects ultimately receiving more than \$50,000.

For subsequent years thereafter, up to \$50,000 of available funds will be allocated.

Category 2 – 10% of available funds following allocations to Category 1 projects.

Category 3 – 60% of available funds following allocations to Category 1 projects; no one project can receive more than 25% of the available funds allocated to this category.



Category 4 – 30% of available funds following allocations to Category 1 projects.

Any funds not utilized in one category will be redistributed among the remaining categories based on their relative percentage of funding. The division will retain five percent (5%) of the moneys allocated annually to the fund to cover the cost of administering the fund. Funds may be carried over from previous years' appropriations and reallocated based upon the above distribution on an annual basis.

(4) Project Prioritization Criteria

If the fund lacks sufficient funds to cover all requests within each category, Priority 1 projects will be funded prior to Priority 2 projects, which will be funded prior to Priority 3 projects, which will be funded prior to Priority 4 projects. If it is determined that there are insufficient funds, further prioritization criteria will be applied as identified under each category in this section. The division may reallocate funding among categories based upon lack of requests or eligible projects within any category.

Criteria for funding project proposals within each category as described in Section 55.3 are as follows:

Category 1 – stormwater management training and best management practices training to reduce the pollution of state waters.

Priority 1 – Projects that implement stormwater management and best management practices training not previously available in Colorado, or previously limited in accessibility.

Priority 2 – Projects that will expand the content or availability of existing stormwater management and best management practices training.

Priority will be given to training providers that can demonstrate that training content will be relevant to implementation in Colorado with regards to Colorado's hydrology, climate and water rights, as applicable.

Priority will also be given to training providers that provide no- or low-cost training.

Additional prioritization criteria will include the expected water quality benefits, total population receiving training, availability of match, and readiness to proceed. Specific points available in each of these categories and tie breaking criteria will be included as an attachment to the request for application.

Category 2 - Projects that improve the water quality in the community or water body which has been impacted by a water quality violation.

Priority 1 – Projects that address impacts to a water supply designated use.

Priority 2 – Projects that address impacts to a recreation designated use.

Priority 3 – Projects that address impacts to an aquatic life designated use.

Priority 4 – Projects that address impacts to an agricultural or wetlands designated use.

Additional prioritization criteria will include financial/affordability, water quality benefits, permit compliance, readiness to proceed, and availability of match. Specific points available in each of these categories and tie breaking criteria will be included as an

attachment to the request for application.

Category 3 - Planning, design, construction, or repair of stormwater projects and domestic wastewater treatment facilities identified on the current fiscal year's Water Pollution Control Revolving Fund Intended Use Plan.

Priority 1 – Projects that improve water quality in the community or water body impacted by a violation.

Priority 2 – Planning, design, construction, or repair of stormwater projects.

Priority 3 – Projects identified on the current year's Water Pollution Control Revolving Fund Intended Use Plan.

Additional prioritization criteria will include financial/affordability, water quality benefits, permit compliance, readiness to proceed, and availability of match. Specific points available in each of these categories and tie breaking criteria will be included as an attachment to the request for application.

Category 4 - Nonfederal match funding for nonpoint source projects.

Priority 1 – Projects that reduce or eliminate water quality impairments identified in Regulation #93 (5 CCR 1002-93), Colorado's Section 303(d) List.

Priority 2 – Projects that protect any established designated water quality use.

(5) Notification and Reporting

Applications for Category 1, 2 and 3 projects will be noticed and accepted by the division after the division determines availability of appropriation. Applicants will be responsible for demonstrating the impacts of the violation on the affected water body or community, and the related water quality improvement project benefits. The division will accept applications for Category 4 projects in accordance with the annual nonpoint source project schedule.

The division will evaluate all applications and determine the grant award(s) for each category based on the criteria in the Entity Eligibility Section, Project Eligibility Section, Funding Allocation Section and Project Prioritization Section.

Grant recipients will provide a final project report within 60 days of completion of the project. Final project reports shall include a detailed description of the project as implemented, all problems encountered and the solutions thereto, itemized project costs, a declaration that the project has been fully implemented as approved, and a description of the environmental and public health benefits resulting from implementation of the project. Information on the grant recipients, including project description and grant award, will be reported in the division's Annual Report to the commission, in accordance with section 25-8-305, C.R.S.

**55.4 NUTRIENTS MANAGEMENT GRANT FUND CRITERIA**

(1) Entity Eligibility

Eligibility is for facilities subject to section 85.5(1)(a)(iii), not including those facilities that are eligible for an exception under 85.5(3)(b). Domestic Wastewater Treatment Works with capacity greater than two million gallons per day that are owned or operated by a local government and discharge to a high-priority watershed as designated by the division are eligible to apply for a Nutrients Management Grant under this section.

(2) Project Eligibility

Projects for planning, design, construction, and/or improvement of domestic wastewater treatment works to comply with the effluent limitations in section 85.5(1)(a)(iii) are eligible for grants.

(3) Project Prioritization

The division shall rank each project based on the priority score of each project. Projects will be funded in priority order from highest to lowest. The division shall consider the following categories to determine the priority score of each Nutrient Management Grant project proposal:

- (a) The division shall evaluate the financial and affordability needs of the proposed project. Financial need shall be determined using a points system that ranks projects based on the median household income of the service area, estimated existing monthly sewer user charges as a percentage of median household income, and the amount of total sewer debt per connection. For eligible facilities that have more than one ownership entity, the division will use an average for the combined service area for each of the applicable scoring elements. In the case of Special Districts, the division will use census block data, if available, to determine the median household income for the area in which the District is located. If census block data is not available, the division will defer to the median household income for the County in which the District is located.

A local match component of twenty percent (20%) of the total grant award will be applied to planning grants only. Local commitment to the proposed planning project shall be determined using a points system that ranks projects based on the percentage of match in the form of liquid capital, or funding from other sources that an applicant has committed to the project based on the estimated total project costs.

Points shall be assigned based on the following criteria:

- i) Median Household Income (MHI) of service area
- |                                   |           |
|-----------------------------------|-----------|
| <75% of State MHI                 | 20 points |
| Between 75% and 85% of State MHI  | 15 points |
| Between 86% and 95% of State MHI  | 10 points |
| Between 96% and 100% of State MHI | 5 points  |
| >100% of State MHI                | 0 points  |
- ii) User Fees (existing sewer fees/area MHI)
- |   |           |
|---|-----------|
| Rates are > 2.0% of the service area's MHI          | 20 points |
| Rates are >1.5% and ≤2.0% of the service area's MHI | 15 points |
| Rates are >1.0% and ≤1.5% of the service area's MHI | 10 points |
| Rates are ≤1.0% of the service area's MHI           | 5 points  |
- iii) Total Sewer Debt per Connection (existing debt/number of connections)
- |  |           |
|--|-----------|
| > \$1,500 per connection                 | 20 points |
| Between \$1,000 - \$1,500 per connection | 15 points |
| Between \$500-\$999 per connection       | 10 points |
| < \$500 per connection                   | 5 points  |

iv) Percent of Local Match Contribution (for Planning Grants only)

> 50%	20 points
Between 35% and 50%	15 points
Between 20% and 34%	10 points
< 20%	0 points

- (b) The division shall evaluate the degree to which the project improves or protects surface water quality by assessing the characteristics of the stream receiving effluent discharge. This includes determining whether the receiving stream has been classified as a cold water stream, a warm water stream, and the dilution rate of the receiving stream.

Points for the receiving stream characteristics shall be assigned based on the following criteria:

i) Receiving Stream Characteristics

Cold water stream	15 points
Warm water stream	10 points

ii) Dilution Rates

Dilution rates <2:1 are considered "low"	15 points
Dilution rates <10:1 but ≥ 2:1 are considered "intermediate"	10 points
Dilution rates <50:1 but ≥10:1 are considered "high"	5 points
Dilution rates ≥ 50:1 are considered "very high"	0 points

- (c) The division shall also consider whether an entity has elected to incorporate a watershed approach to nutrient management that addresses the protection of surface and/or groundwater resources through either the planning and/or development of non-point source or agricultural best management practices both upstream and downstream from the facility; or the entity has elected to participate in or facilitate Community Action Partnerships, project sponsorship, or conduit financing mechanisms to enable other community stakeholders who will undertake nutrient, non-point source, or agricultural monitoring efforts both upstream and downstream of the facility. Applicants that incorporate such efforts, in addition to their treatment facility upgrade and adaptations, shall be awarded 10 points.

- (d) The division shall evaluate the impacts of operational cost for design/construction projects and for planning projects with separate criteria.

The operational costs for design/construction projects will evaluate nutrient treatment upgrades and adaptations to existing Domestic Wastewater Treatment facilities based on cost per million gallons treated. Operational cost estimates are based on broad technology types available for nutrient removal and benchmarks are based on national cost averages published in the U.S. EPA (2008) Municipal Nutrient Removal Technologies Reference Document Volume I; Chapter 4, Cost Factors, which is incorporated herein by reference. This incorporation does not apply to later amendments or editions of the document, and is available via internet:

<http://water.epa.gov/scitech/wastetech/upload/mnrt-volume1.pdf>, or from the Water Quality Control Commission Office, 4300 Cherry Creek Drive South, Denver, CO 80246, 303-692-3463.

Points for design/construction projects shall be assigned based on the following criteria:

- i) Estimated Operational Cost per million gallons treated
  - <\$75 per million gallons treated 5 points
  - Between \$75 - \$200 per million gallons treated 10 points
  - Between \$199 and \$500 per million gallons treated 15 points
  - >\$500 per million gallons treated 20 points
- ii) The division shall evaluate the costs associated with planning projects that incorporate one or more of the following nutrient management planning methodologies. For each of the following methodologies that are included, five points will be awarded.
  - Water Quality Monitoring Plan Development 5 points
  - Operational Optimization Study 5 points
  - Operations Pilot Testing of Nutrient Removal Technology 5 points
  - Carbon Planning for Biological Nutrient Removal Technology 5 points
- (e) The division shall determine the level of environmental impacts as a result of nutrient loading based on the number of Single Family Equivalent units located within the service area. Points shall be assigned based on the following criteria:
  - i) Environmental impact based on number of Single Family Equivalents in Service Area
    - <10,000 5 points
    - Between 10,000 and 30,000 10 points
    - Between 30,001 and 50,000 15 points
    - Over 50,000 20 points
- (f) The division shall evaluate whether the applicant has a Utility Management Plan in place that includes one or more of the criteria referenced below. For each of the following criteria that are met, 5 points shall be assigned:
  - i) Secures a replacement fund for the rehabilitation and replacement of infrastructure as needed.
  - ii) Includes provisions addressing the proper training, licensing, and certification of operators required to adequately operate and maintain the selected wastewater treatment technology.
  - iii) Includes provisions ensuring that the facility has adequate in-house staffing, long-term management contracts, or partnerships with third-party providers to properly operate and maintain the facility.
  - iv) Provides sufficient revenue to meet operations and maintenance capital needs (operating revenue divided by the operating expense).
  - v) Includes mechanisms to protect infrastructure investments to ensure longevity and ongoing functionality of non-point source best management practices.
- (g) The division shall determine whether the project is ready to proceed with funding based

on the following indicators specific to design/construction projects. For each of the following criteria that are met, 5 points shall be assigned:

- i) Site Application has been submitted.
  - ii) Process Design Report has been submitted.
  - iii) Technical plans and specifications have been submitted.
- (h) The division shall determine whether the project is ready to proceed with funding based on the following indicators specific to planning projects. For each of the following criteria that are met, 5 points shall be assigned:
- i) Applicant has the required twenty percent (20%) local match secured and held in cash reserve.
  - ii) Engineer/Consultant(s) has been selected.
  - iii) Agreements with selected Engineer/Consultant(s) are in place.
- (i) In the event that two or more projects have the same priority score and rank, the division shall give priority to the project that is most ready to proceed with moving forward with financial assistance based on the readiness to proceed indicators specified in subsection 3(g) and (3)(h) above. If projects remain tied, priority will be given to the applicant that demonstrates the highest financial need pursuant to subsection 3(a).

(4) Funding Allocation and Awarding Process

The Colorado General Assembly created a Nutrients Management Grant Fund to assist eligible applicants with the costs associated with implementation of the Nutrients Management Control Regulation No.85. Funding is contingent upon final appropriation by the Colorado General Assembly. Pending appropriation, the division will develop a request for application to solicit projects for funding. If there are more requests than available funds, the division will prioritize projects based on the above criteria and will notify all applicants of their funding status after the establishment of a fundable list. The fundable list will be posted on the division website to identify the recipients of funds and the amount of each award.

Projects will be funded in priority order, highest to lowest, until all funds have been allocated. The division will determine the amount of funding to be made available for design/construction projects and the amount to be made available for planning projects. The division will have the authority to transfer funds between design/construction projects and planning projects as needed to sufficiently meet the demand indicated by the number of Nutrient Management Grant applications that are received. In the event that funds remain unallocated subsequent to a transfer of funds between project types, the division has the authority to increase the amount of grant awards in priority order, highest to lowest, until all of the funds have been allocated.

**55.5 NATURAL DISASTER GRANT FUND CRITERIA**

(1) Entity Eligibility

- (a) Local governments defined as governmental agencies in section 55.2 that own and operate domestic wastewater treatment works and public drinking water systems in a designated disaster emergency county by an executive order or proclamation under section 24-33.5-704, C.R.S.

- (b) Local governments accepting grants on behalf of and in coordination with not-for-profit public drinking water systems.
- (c) Local governments assisting with the repair and restoration of on-site wastewater treatment systems as defined in section 25-10-103(12), C.R.S.
- (d) If funds are transferred to the Nutrients Management Grant Fund pursuant to section 55.5(3)(d), eligible entities will be determined per section 55.4 of this regulation.

(2) Project Eligibility

- (a) Domestic wastewater treatment works, public drinking water systems and on-site wastewater treatment systems that have been impacted, damaged or destroyed in connection with the September 2013 flood, or future declared disaster emergencies.
- (b) Projects for the planning, design, construction, improvement, renovation or reconstruction of domestic wastewater treatment works or public drinking water systems that have been impacted, damaged or destroyed in connection with the September 2013 flood.
- (c) Grant moneys under this section may be used as matching funds required to secure any other state and federal funding for the planning, design, construction, improvement, renovation or reconstruction of drinking water and wastewater infrastructure.

(3) Award Process and Funding Allocation

- (a) Appropriations are subject to approval by the Colorado General Assembly, and funding is contingent upon such final appropriation. Pending appropriation, the division will administer the funds per the Natural Disaster Grant Fund rules identified in this section and prioritize projects based upon the criteria in section 55.5(4) below. The division will notify all applicants of their funding status after the establishment of a fundable list. The fundable list will be posted on the division website to identify the recipients of funds and the amount of each award.
- (b) A portion of the Natural Disaster Grant Fund will be set-aside to assist local governments with grants for on-site wastewater treatment systems that have been impacted as a result of the September 2013 flood. To sufficiently meet the demand indicated by the number of applications received and project type, the division has the authority to transfer funds between the set-aside for on-site wastewater treatment systems and the Natural Disaster Grant Fund. If a transfer occurs and project prioritization is required, the division will prioritize per section 55.5(4).
- (c) In the event that funds remain unallocated subsequent to a transfer of funds between the Natural Disaster Grant Fund and the on-site wastewater set-aside, the division has the authority to increase the amount of grant awards in priority order, highest to lowest, until all of the funds have been allocated or the application demand has been met.
- (d) On September 1, 2015, any unencumbered moneys remaining in the Natural Disaster Grant Fund will be transferred to the Nutrients Management Grant Fund, at which time the division will solicit a separate request for application per section 55.4, the Nutrients Management Grant Fund.

(4) Project Prioritization

- (a) If the demand for funding in the Natural Disaster Grant Fund exceeds the available funds, the division shall rank each project based on population criteria, financial affordability

factors, regionalization, utilization of multiple funding sources, readiness to proceed and impacts as a result of the September 2013 flood. The division will give priority to the applicants that have the lowest financial ability to pay. Specific point ranking criteria and associated points under each of the above factors will be included in the request for application. Projects will be funded in priority order from highest to lowest until all funds have been allocated.

- (b) Local governments receiving funds from the set-aside portion for the rehabilitation for on-site wastewater treatment systems impacted by the September 2013 flood will receive an equitable percentage of the funds requested. For example, if \$1 million is allocated to the set-aside portion and \$2 million is requested, each valid applicant will receive 50% of its application request.

## **55.6 SMALL COMMUNITIES WATER AND WASTEWATER GRANT FUND CRITERIA**

### **(1) Entity Eligibility**

- (a) The department, in the name of the state and to the extent that state funds are appropriated therefor, may enter into contracts with governmental agencies, including counties, and not-for-profit public water systems, as defined in section 25-1.5-201(1), which serve a population of not more than five thousand people, to grant moneys for the planning, design, and construction of public water systems designed to protect public health.
- (b) The department, in the name of the state and to the extent that state funds are appropriated therefor, may enter into contracts with governmental agencies, including counties, for domestic wastewater treatment works, as defined in section 25-8-103(5), which serve a population of not more than five thousand people which serve a population of not more than five thousand people, to grant moneys for eligible projects as defined in section 25-8-701(2).

### **(2) Project Eligibility**

- (a) Projects for the planning, design, and construction of public water systems or domestic wastewater treatment works that serve a population of not more than five thousand people and which are necessary for the protection of public health and water quality.

### **(3) Award Process and Funding Allocation**

- (a) The division will administer the funds per the Small Communities Water and Wastewater Grant Fund rules identified in this section. The available funds will be allocated approximately 50/50 between water and wastewater projects. The division will adjust the 50/50 allocation if necessary depending upon the quantity and composition of the application requests. No more than 10% of the total available funds will be distributed to any single water and/or wastewater eligible project. The division will notify all applicants of their funding status after the establishment of a fundable list.

The fundable list will be posted on the division website to identify the recipients of funds and the amount of each award.

### **(4) Project Prioritization**

- (a) Drinking Water
  - i) If the demand for funding in the Small Communities Water and Wastewater Grant



Fund exceeds the available funds, the division shall rank each project based on financial/affordability, drinking water quality and public health, Colorado Primary Drinking Water Regulation compliance, and readiness to proceed. The division will give priority to the applicants that have the lowest financial ability to pay based upon project ranking criteria. Specific point ranking criteria and associated points under each of the above factors will be included in the request for application. Projects will be funded in priority order from highest to lowest until all funds have been allocated.

- ii) Additional points will be awarded if the need for the project is a result of a natural disaster in a county where the Governor has declared a disaster emergency by Executive Order or proclamation under section 24-33.5-704, C.R.S.

(b) Wastewater

- i) If the demand for funding in the Small Communities Water and Wastewater Grant Fund exceeds the available funds, the division shall rank each project based on financial/affordability, water quality improvement, permit compliance, and readiness to proceed. The division will give priority to the applicants that have the lowest financial ability to pay based upon project ranking criteria. Specific point ranking criteria and associated points under each of the above factors will be included in the request for application. Projects will be funded in priority order from highest to lowest until all funds have been allocated.
- ii) Additional points will be awarded if the need for the project is a result of a natural disaster in a county where the Governor has declared a disaster emergency by Executive Order or proclamation under section 24-33.5-704, C.R.S.

**55.7-10 RESERVED**

**55.11 STATEMENT OF BASIS AND PURPOSE REGARDING THE DOMESTIC WASTEWATER TREATMENT GRANT PROGRAM (1998)**

In accordance with the requirements of 24-4-103(4), the Commission makes these findings and adopts this Statement of Basis and Purpose.

The subject regulations are in implementation of the requirements of the Colorado Water Quality Control Act, C.R.S., 25-8-101., et seq. Section 202 of the Act requires that the Commission administer construction grants for municipal waste treatment facilities for the State. In particular, C.R.S., 1973, 25-5-202(1)(e)(g) provide as follows: The Commission shall develop and maintain a comprehensive and effective program for prevention, control, and abatement of water pollution and for water quality protection throughout the entire state and, in connection therewith, shall:

- (e) Perform duties assigned to the Commission in part 7 of this article with respect to the location, design, construction, financing, and operation of domestic wastewater treatment plants
- (g) Promulgate regulations and adopt priority ranking for the administration of federal and other public source construction loans or grants which the Commission or the Division administers which loans or grants shall not be expended for any purpose other than that for which they were provided.

These regulations provide a format for determining which eligible projects should receive funds. The priority system is in five parts as follows:

5.5.1 Authority

5.5.2 Purpose

5.5.3 Priority System

5.5.4 Prioritization within Categories

5.5.5 Determination of Project Funding

5.5.6 Update of Categorization and Ranking List

**55.12 STATEMENT OF BASIS SPECIFIC STATUTORY AUTHORITY, AND PURPOSE REGARDING THE DOMESTIC WASTEWATER TREATMENT GRANT PROGRAM (1991 REVISIONS)**

The provisions of Sections 25-8-202(1)(e), and (g); 25-8-308(1)(d); and 37-95-107.6(4) C.R.S., provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with Sections 24-103(4) C.R.S., the following statement of basis and purpose.

**BASIS AND PURPOSE**

Many changes were incorporated into the priority system procedures (5.5.3) to allow additional projects that are eligible under this program to receive funding. The categories added were for potential health hazards, facilities that are beyond design life and in need of repair and sludge disposal. Categories for potential health hazards and facilities beyond design life and in need of repair were added to assist communities with pollution prevention to limit initiation of compliance and enforcement measures. The sludge disposal category was added to assist communities with meeting State/EPA sludge management regulations. The changes were also made to coincide with the Water Pollution Control Revolving Fund (WPCRF) 5.2.5 priority system procedures. The changes made will allow the Division to utilize one priority point system for all State priority lists. This system will accommodate the State grant program, the Sewer Needs List for the Division of Local Government, the WPCRF and any future federal grant program.

**55.13 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE REGARDING THE DOMESTIC WASTEWATER TREATMENT GRANT PROGRAM (1992 REVISIONS)**

The provisions of Sections 25-8-202(1)(e), and (g); 25-8-308(1)(d); and 37-95-107.6(4) C.R.S. provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with Sections 24-4-103(4) C.R.S., the following statement of basis and purpose.

**BASIS AND PURPOSE**

The FY93 State Sewage Construction Grant Priority List is presented to the Water Quality Control Commission for agency action and public comment. The regulations under 5.5.4 provide for projects to be listed in a priority basis for funding dependent upon appropriations from the State Legislature. Because of lottery sales, it is possible this program will receive \$2 million for funding in FY93-94.

**55.14 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE REGARDING THE DOMESTIC WASTEWATER TREATMENT GRANT PROGRAM (1993) REVISIONS)**

The provisions of Sections 25-8-202(1)(e), and (g); 25-8-308(1)(d); and 37-95-107.6(4) C.R.S. provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with Sections 24-4-103(4) C.R.S., the following statement of basis and purpose.

**BASIS AND PURPOSE**

The FY94 State Sewage Construction Grant Priority List is presented to the Water Quality Control Commission for agency action and public comment. The regulations under 5.5.4 provide for projects to be

listed in a priority basis for funding dependent upon appropriations from the State Legislature. The Division has received \$2 million for funding in FY93-94.

**55.15 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE REGARDING THE DOMESTIC WASTEWATER TREATMENT GRANT PROGRAM (1994) REVISIONS)**

The provisions of Sections 25-8-202(1)(e), and (g); 25-8-308(1)(d); and 37-95-107.6(4) C.R.S. provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with Sections 24-4-103(4) C.R.S., the following statement of basis and purpose.

**BASIS AND PURPOSE**

The FY95 State Sewage Construction Grant Priority List is presented to the Water Quality Control Commission for agency action and public comment. The regulations under 5.5.4 provide for projects to be listed in a priority basis for funding dependent upon appropriations from the State Legislature. The Division has received \$2 million for funding in FY94-95.

**55.16 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE REGARDING THE DOMESTIC WASTEWATER TREATMENT GRANT PROGRAM (1995) REVISIONS)**

The provisions of Sections 25-8-202(1)(e), and (g); 25-8-308(1)(d); and 25-8-703 C.R.S. provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with Sections 24-4-103(4) C.R.S., the following statement of basis and purpose.

**BASIS AND PURPOSE**

The FY96 State Sewage Construction Grant Priority List is presented to the Water Quality Control Commission for agency action and public comment. The regulations under 5.5.4 provide for projects to be listed in a priority basis for funding dependent upon appropriations from the State Legislature. The Division has received \$2 million for funding in FY95-96. The Division will be utilizing 5% (\$100,000) for Administration of the program.

**55.17 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE REGARDING THE DOMESTIC WASTEWATER TREATMENT GRANT PROGRAM: JULY, 1997 RULEMAKING**

The provisions of sections 25-8-202 and 25-8-401, 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 has adopted a revised numbering system for this regulation, as a part of an overall renumbering of all Water Quality Control Commission rules and regulations. The goals of the renumbering are: (1) to achieve a more logical organization and numbering of the regulations, with a system that provides flexibility for future modifications, and (2) to make the Commission's internal numbering system and that of the Colorado Code of Regulations (CCR) consistent. The CCR references for the regulations will also be revised as a result of this hearing.

**55.18 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE REGARDING THE DOMESTIC WASTEWATER TREATMENT GRANT PROGRAM: FEBRUARY, 1998 RULEMAKING**

The provisions of sections 25-8-202(1)(e) and (g); 25-8-308(1)(d); and 25-8-703, 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 FY98 State Sewage Construction Grant Priority List has been approved by the Water Quality Control Commission. Regulation # 53 provides for projects to be listed in a priority basis for funding dependent upon appropriations from the State Legislature.

The Division has received \$3 million for funding in FY96-97 and \$3 million for FY97-98. The Division will be utilizing up to 5% of each grant for administration of the program.

The Commission received comments from the Denver Regional Council of Governments Water Resource Management Advisory Committee. There appear to be three concerns by DRCOG, that are addressed as follows.

The Division has always in the past and will continue in the future (by means of the site approval process and Commission policy established in the Water Pollution Control Revolving Fund Rules) ensure that projects are identified in the appropriate water quality planning documents prior to the award of funds to construct the project. The Division has committed to aggressively involve DRCOG as well as other water quality management agencies with the WPCRF Intended Use Plan and the State Construction Grant List as they are developed.

The Clear Creek/Arapahoe MHP and the Clear Creek/Herman Area are two distinct projects.

The Box Elder Water and Sanitation District is a community of approximately 40 homes near the Tomahawk Truck Stop in Adams County; however, the address listed with Special Districts to send correspondence is in the City of Englewood. The Division is willing to include both the location of the District and the address where they send correspondence.

### **55.19 STATEMENT OF BASIS AND PURPOSE REGARDING THE DRINKING WATER GRANT FUND (1999)**

These rules establish a system to administer grant funds and to provide for a mechanism to prioritize eligible projects. The rules allow lower priority drinking water systems to receive funding ahead of systems with higher priority if the higher priority system does not apply for the funding or is not ready to proceed with its project.

The Drinking Water Grant Program will provide financial assistance to governmental agencies and not-for-profit public water systems serving populations of not more than 5,000 people for projects including consolidation, planning, design and/or construction of public water systems.

The Drinking Water Grant Program Plan, which includes eligible projects, will be developed by the WQCD and submitted to the Board of Health (Board) once each year. A public will be held by the Board to receive input on the Plan. Following the meeting, any changes will be incorporated and the final Plan shall be approved by the Board.

These rules are similar to those adopted by the Board for the Drinking Water Revolving Fund. The rules are also similar to those adopted by the Water Quality Control Commission (Commission) for the Water Pollution Control Revolving Fund and the Domestic Wastewater Treatment Grant Program. The rule adoption authority for wastewater rests with the Commission while the drinking water rules are adopted under the authority of the Board of Health.

### **55.20 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE REGARDING THE DOMESTIC WASTEWATER TREATMENT GRANT PROGRAM (1999) REVISIONS**

The provisions of Sections 25-8-202(1)(e), and (g); 25-8-308(1)(d); and 25-8-703 CRS. 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 FY99 State Sewage Construction Grant Priority List is presented to the Water Quality Control Commission for agency action and public comment. Regulations No. 53 provide for projects to be listed in a priority basis for funding dependent upon appropriations from the State Legislature.

The Division has received \$3 million for funding in FY97-98 and \$3 million for FY98-99. The Division will be utilizing up to 5% of each grant for administration of the program.

### **55.21 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE REGARDING THE DOMESTIC WASTEWATER TREATMENT GRANT PROGRAM (2000) REVISIONS**

The provisions of sections 25-8-202(1)(e) and (g); 25-8-308(1)(d); and 25-8-703 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 subject regulations are in implementation of the requirements of the Colorado Water Quality Control Act, C.R.S., 25-8-101. et seq. Section 25-8-202 of the Act requires that the Commission promulgate regulations for the administration of grants for domestic wastewater treatment facilities for the State. In particular, C.R.S., 25-8-202(1)(e) and (g) provide as follows: "The Commission shall develop and maintain a comprehensive and effective program for prevention, control, and abatement of water pollution and for water quality protection throughout the entire state and, in connection therewith, shall:

- (e) Perform duties assigned to the Commission in part 7 of this article with respect to the location, design, construction, financing, and operation of domestic wastewater treatment plants.
- (g) Promulgate regulations and adopt priority ranking for the administration of federal and other public source construction loans or grants which the Commission or the Division administers, which loans or grants shall not be expended for any purpose other than that for which they were provided.

A stakeholders group with members from the Southeast Council of Governments, Clear Creek Watershed Forum, a consulting engineering firm, the State Environmental Information Center, the Water Quality Control Division and the Division of Local Government of the Department of Local Affairs met to create new regulations to provide a format for determining which eligible projects should receive funds under the Domestic Wastewater Treatment (DWWT) Grant Program.

The need for revising Regulation No. 53 came about when the previous priority system that was used for both grants and loans under Regulation No. 51 (Water Pollution Control Revolving Fund (WPCRF) Rules) was deleted and replaced with a system that could fund water quality projects beyond wastewater treatment. Since Colorado's Water Quality Control Act only allows grants to small community domestic wastewater treatment projects, separate regulations had to be established to provide criteria for eligible grants. It is the Division's intent to continue to utilize the list of projects developed under the WPCRF Rules by extracting the projects that would meet the criteria for DWWT Grant Program established under this regulation.

Section 53.4(3) allows the Division to provide assistance to governmental agencies that were not identified in the Intended Use Plan and yet still need to move ahead with a project or make adjustments in

an emergency situation. The focus on providing funds for planning or a quick fix in an emergency and then ensuring that those projects are identified on a subsequent approved plan provides flexibility while preserving the credibility of the process.

The timing of the public rulemaking hearing for this regulation will not accommodate approval of the Intended Use Plan for the year 2000 by December 31, 1999. The 2000 Intended Use Plan will be developed as Regulation No. 54 for the Commission's approval in February 2000 after adoption of these regulations. Until this process is complete, the Division will continue to award grant contracts from the Commission's approved 1999 State Construction Grant Priority List.

The new system as proposed will provide categories of eligible projects, provide mechanism for funding throughout the year, identify the use of the grant funds and allow for prioritization as necessary. The proposed system is still similar to the WPCRF and can accommodate this DWWT Grant Program, the Sewer Needs List for the Division of Local Government, and any future federal grant program.

#### **55.22 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE REGARDING THE DOMESTIC WASTEWATER TREATMENT GRANT PROGRAM (2001) REVISIONS**

The provisions of sections 25-8-202(1)(e) and (g); 25-8-308(1)(d); and 25-8-703 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**

With the passage of HB 1246, the scope of the DWWT Grant Funding System has been expanded to enable the program to fund counties on behalf of unincorporated areas with populations of not more than 5,000. This change is incorporated into this Regulation #53 and involves expanding the definition of "governmental agency" to include "counties on behalf of unincorporated areas" and the definition of a "small community" to include unincorporated areas of not more than 5,000 population.

The body of the regulation does not need to be changed because it has always been broad enough to identify the needs in counties. The Domestic Wastewater Treatment Grant Program funds were not made available to counties on behalf of unincorporated areas until the statutory change was made and approved March 20, 2001. Paragraph (1)(b)(i) of 25-8-703 gives the Division authority to enter into contracts with counties on behalf of unincorporated areas and it will be repealed July 1, 2006.

#### **55.23 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE REGARDING THE DOMESTIC WASTEWATER TREATMENT GRANT PROGRAM (MAY 2004 RULEMAKING)**

Sections 25-8-202(1)(e) and (g); 25-8-308(1)(d); and 25-8-703, 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**

Recent statutory amendments led to changes to the regulations governing another of the Division's funding programs, the Water Pollution Control Revolving Fund Rules, Regulation No. 51. Since the Commission was planning to consider changes to Regulation No. 51, the Attorney General's Office also examined Regulation No. 53, focusing on streamlining certain provisions of the two regulations. The Attorney General's Office, along with the Division and a stakeholders group, also discussed options to simplify the process for the Commission's annual approval of the program's "Intended Use Plan."

In order to accomplish these objectives, the Commission made the following changes to Regulation No. 53:

Section 53.3 - Detailed definitions of a public health hazard and significant non-compliance were added to assist staff in determining under which category a project should be listed.

Section 53.4(1) - A change was made to indicate that the Domestic Wastewater Treatment Grant Program Intended Use Plan will be approved annually by the Commission in a public forum after a public notice and comment period, but not through a rulemaking process.

Section 53.4(2) - Category 1 and 2 were explained further to assist staff in categorizing projects on the Project Eligibility List.

## **55.24 STATEMENT OF BASIS AND PURPOSE REGARDING THE WATER QUALITY IMPROVEMENT FUND (MAY 2007)**

The provisions of Sections 25-8-202, 25-8-308, and 25-8-608, C.R.S. provide the specific statutory authority for adoption of the attached regulations. The Commission, in compliance with section 24-4-103(4), C.R.S., has adopted the following statement of basis and purpose.

### **BASIS AND PURPOSE**

The purpose of this new regulation is to implement the Fund as established by House Bill 06-1337. This regulation provides a format for identifying eligible grant recipients and projects, Fund allocation, and prioritization criteria that will be used to award grants from the Fund.

The General Assembly appropriated \$292,990 for the Fund for state fiscal year 2007. However, the statute did not take effect until the passage of the bill on May 26, 2006 and applies only to violations committed on or after this date. Only those penalties collected after May 26, 2006 and appropriated by the General Assembly will be available for grants.

The Fund will be administered by the Division, which also administers the Water Pollution Control Revolving Fund loans, State Domestic Wastewater Grants, and the Clean Water Act Section 319 nonpoint source grants. When compared to Water Pollution Control Revolving Fund loans, State Domestic Wastewater Grants, and the Section 319 nonpoint source grants, the initial amount of funding provided for the Fund is considerably less. No additional Division staff is included in the legislation to administer grants associated with this regulation. The goals of this regulation are similar to those for the Water Pollution Control Revolving Fund, State Domestic Wastewater Grant and the Section 319 nonpoint source grants. The grant amounts of the Fund are expected to be relatively small compared to the overall cost of such projects, and in most cases will not cover the entire cost of the project. Therefore, the Commission has determined that the most efficient and effective process to implement the Fund is to use, where established, the criteria already established by the three existing funding mechanisms.

An established process did not exist for projects identified under Category 1 (projects that improve the water quality in the community or water body which has been impacted by a water quality violation that resulted in a penalty being imposed). The Commission determined that a separate application process, with the criteria of project eligibility, Fund allocation, and project prioritization criteria being specifically developed, should be established to provide funding. This process will be compatible with existing Division loan and grant funding opportunities.

The Commission determined that entity eligibility for receipt of funding should be consistent with existing loan and grant opportunity processes and criteria. Ineligible entities are specifically identified to eliminate the potential for a party issued an enforcement action to apply for and receive grant funding. Project eligibility was determined to be consistent with the requirements specified in HB-06-1337. Funding allocation was determined by considering the legislative intent of the bill, which resulted in giving a slightly higher proportion to improving water quality in the community or water body that has been impacted by a water quality violation, to address effects from discharge violations. Categories 2 and 3 are given an equal funding allocation so that projects in these categories would receive funding over time. Project

prioritization is established within each category because of the unique aspects of the project types. Category 1 and 2 priorities are to first address public health impacts to communities or impacted water bodies, and environmental impacts second. Category 3 priorities are to address more historic water quality impairments first, and protection of existing water quality designated uses and standards second.

This regulation will be implemented beginning in the fiscal year for which funds are appropriated and available. The Commission determined that implementation of this new Fund should be in conjunction with existing loan and grant opportunities currently administered by the Division, so as to minimize additional solicitation activities and associated staff workload.

**55.25 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE REGARDING THE DOMESTIC WASTEWATER TREATMENT GRANT PROGRAM (JULY 2008 RULEMAKING, EFFECTIVE DATE JANUARY 1, 2009)**

The provisions of sections 25-8-202(1)(e) and (g); 25-8-308(1)(d); and 25-8-703 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**

Changes to the Rules have been made to streamline the Intended Use Plan process. The categorization and prioritization system that are included in the Water Pollution Control Revolving Loan Fund Rules have been incorporated into the Domestic Wastewater Treatment Grant Rules. These revisions will enable the Division to develop one Intended Use Plan and Project Eligibility List, that will be used for both the grant and loan funds.

**55.26 STATEMENT OF BASIS AND PURPOSE REGARDING THE DRINKING WATER GRANT FUND (JULY 14, 2008 RULEMAKING, EFFECTIVE DATE JANUARY 1, 2009)**

Sections 25-1.5-208 and 25-1.5-208(1)(b) 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**

Changes to Section 25-1.5-208 C.R.S. moved the authority for promulgating rules and approving the annual intended use plan from the Colorado Board of Health to the Water Quality Control Commission (Commission). Updates to these rules reflect this change in authority.

Changes to the Rules have also been made that streamline the Intended Use Plan process. The categorization and prioritization system that is included in the Drinking Water Revolving Loan Fund Rules have been incorporated into the Drinking Water Grant Program Rules. These revisions will enable the Division to develop one Intended Use Plan and Project Eligibility List, that will be used for both the grant and loan funds.

**55.27 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE REGARDING THE WATER QUALITY IMPROVEMENT FUND, FEBRUARY 13, 2012 RULEMAKING, EFFECTIVE MARCH 30, 2012**

The provisions of Sections 25-8-202, 25-8-308, and 25-8-608, C.R.S. provide the specific statutory authority for adoption of the attached regulations. The Commission, in compliance with section 24-4-103(4), C.R.S., has adopted the following statement of basis and purpose.

**BASIS AND PURPOSE**



House Bill 11-1026 amended the Water Quality Control Act to authorize grants for stormwater management training and best practices training to prevent or reduce the pollution of state waters.

Section 55.3 (Entity Eligibility) was amended for consistency with HB 11-1026 to include not-for-profit stormwater administrators and training providers as types of entities eligible to receive funding.

Section 55.4 (Project Eligibility) was amended per HB 11-1026 to add stormwater management training and best management practices training as Category 1 type projects. The existing categories were renumbered to account for this addition.

Section 55.5 (Funding Allocation) was amended to provide for up to \$50,000 of available water quality improvement funds to Category 1 projects. The Commission determined that it was appropriate to allocate this amount as the maximum allowed under HB 11-1026.

The Commission determined it was appropriate to reduce the funding for Category 2 (formerly Category 1) projects from 40% to 10%. This category includes projects for the improvement of water quality impacts which are the result of a water quality violation that resulted in a penalty. While the Commission believes it is appropriate to maintain some level of funding for such projects, the number of applicants that have historically applied for funding under this category has been limited. In order to inform potential applicants of their eligibility to receive funding under Category 2, the Division will post a list of violators who paid penalties into the Water Quality Improvement Fund. The list will also include the county where the violation occurred. If the applicant can demonstrate its project will improve the water quality in the community or water body which has been impacted by the violation, such applicant may be eligible to receive funding.

The Commission also increased the funding allocation for Category 3 (formerly Category 2) projects from 30% to 60% because this category, which relates to planning, design, construction and repair of stormwater projects and domestic wastewater treatment works, represents the majority of funding requests received by the Division. The Commission found the increase for Category 3 to be necessary to address the high level of demand and the \$2.9 billion of infrastructure needs that are documented in the 2012 Water Pollution Control Revolving Fund Intended Use Plan. The allocation for Category 4 (formerly Category 3), nonfederal match funding for nonpoint source projects, will remain at 30% of available funds.

In addition, language was added to section 55.5 to clarify that if any funds were not utilized in one category they will be redistributed among the remaining categories.

Section 55.6 (Project Prioritization Criteria), outlining the prioritization of grant requests within each category, was revised to include the new Category 1. The Commission found it appropriate to give priority to projects that implement stormwater management and best management practices training not previously available (or previously limited in accessibility) in Colorado, above those projects that will simply expand the context or availability of existing stormwater management and best management practices training. Language was also added to section 55.6 to explain that if insufficient requests for funding are received and determined eligible, the Division has the ability to reallocate funding among categories based on demand. Historically, when the Division did not receive sufficient eligible applications within a certain category, the funds allocated to that category were not expended. This provision ensures that all funds appropriated each year can be utilized.

Section 55.7 (Notification and Reporting) was amended to require grant recipients to provide a final project report instead of an annual report. Based upon Division feedback, the Commission determined this to be a more efficient approach to reporting.

#### PARTIES TO THE RULEMAKING

1. Urban Drainage and Flood Control District
2. Colorado Department of Transportation

**55.28 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE REGARDING THE WATER QUALITY IMPROVEMENT FUND, JUNE 11, 2012 RULEMAKING, EFFECTIVE JULY 30, 2012**

The provisions of Sections 25-8-202, 25-8-308, and 25-8-608, C.R.S. provide the specific statutory authority for adoption of the attached regulations. The Commission, in compliance with section 24-4-103(4), C.R.S., has adopted the following statement of basis and purpose.

**BASIS AND PURPOSE**

During the 2012 legislative session the General Assembly authorized additional funding for the Water Quality Improvement Fund through the annual appropriation of the Long Bill. In 2012, \$600,000 for capital construction funding has been authorized with the flexibility to expend the funds over a three year period. The Commission took action to modify Regulation #55 by changing the funding allocation, project prioritization criteria, and notification provisions. Historically, \$167,000 was appropriated annually for the Water Quality Improvement Fund with a requirement that the funds be expended within the fiscal year.

There has been more demand for Water Quality Improvement Fund grants due to the increase in available funds, the requirement to provide stormwater training grants, and the flexibility to expend the funds over multiple years. In order to properly notify the Requests for Applications, allocate, and award funds the Commission adopted the following modifications to Regulation #55:

Section 55.2 - Definitions were modified for the non-point source and stormwater projects to better clarify the intent of the statute and to specify the types of projects eligible for funding from the Water Quality Improvement Fund.

Section 55.5 – Funding Allocation was modified to provide additional funding for each of the four categories of projects under the statute. Specifically, additional funding has been provided for the first year of implementation of the stormwater management training category. Limits have been established within specific categories to ensure funding is equitably distributed among eligible applicants.

Section 55.6 - Project Prioritization Criteria were modified to include additional criteria. The additional criteria will be used to further prioritize projects within categories when there is insufficient funding. Specific criteria and associated points will be included as an attachment to the Request for Applications notice. The criteria will include population served/benefited by the project, financial/affordability (with an emphasis on providing funding opportunities for smaller, less financially capable communities), water quality benefits, permit compliance, readiness to proceed and availability of local project match. For Category 1 projects, a specific project may meet Priority 1 criteria over multiple years during the period that the training is being developed and established. For consistency, the Category 3 description was modified to reflect the project eligibility description identified in 55.4. Reference to the non-existent State Domestic Wastewater Treatment Grant was deleted.

Section 55.7 – Notification and Reporting section was modified to eliminate the application deadline and allow the Division the flexibility to notice Requests for Applications depending upon availability of appropriation of funds by the legislature.

**PARTIES TO THE RULEMAKING**

1. Urban Drainage and Flood Control District

**55.29 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE REGARDING THE WATER QUALITY IMPROVEMENT FUND, MAY 13, 2013 RULEMAKING, EFFECTIVE JUNE 30, 2013**

The provisions of Sections 25-8-202, 25-8-308, and 25-8-608, C.R.S. provide the specific statutory

authority for adoption of the attached regulations. The Commission, in compliance with section 24-4-103(4), C.R.S., has adopted the following statement of basis and purpose.

### **BASIS AND PURPOSE**

During the 2013 legislative session the General Assembly created a new program under HB-13-1191 entitled the Nutrient Grant Fund. HB-13-1191 requires the Commission to promulgate rules necessary to administer the program as an amendment to Regulation #55, the Water Quality Improvement Fund. In order to assist parties submitting a Request for Applications, and in order to provide a transparent process for allocation and award of the funds the Commission created section 55.8, Nutrients Management Grant Fund. This section established four subsections for administering the program; Entity Eligibility, Project Eligibility, Project Prioritization, and Funding Allocation and Awarding Process.

Entities eligible for funding under this section are those Domestic Wastewater Treatment Works owned and operated by local governments and subject to the first phase implementation of Regulation #85. Funds can be used for projects to plan, design, construct, or improve a wastewater treatment works in order to comply with the effluent limits of Regulation #85.

The Project Prioritization criteria that were developed for the Nutrient Management Grants were designed to reflect language contained in HB-13-1191 which emphasized priority to be given to eligible applicants who would be the most financially burdened by the costs associated with incorporating the necessary improvements or adaptations to their domestic wastewater treatment facilities necessary to achieve compliance with Regulation #85. The priority system is comprised of five sections (affordability, water quality, operational costs/environmental impact, managerial capability, and readiness to proceed) with the majority of total points available to capture financial need of eligible applicants. Some sections have multiple criteria for scoring. The priority system evaluates the environmental impacts associated with nutrient loads to surface waters, the anticipated operational costs associated with implementing nutrient management controls, and the ability of eligible applicants to properly operate, maintain, and ensure the longevity and integrity of infrastructure investments. The priority system also provides points for eligible applicants who work cooperatively with community partners in efforts to address nutrient management on a watershed basis by incorporating non-point source monitoring and best management practices both upstream and downstream of the domestic wastewater treatment facility.

The Commission felt that a local match commitment of twenty percent (20%) for Planning grants was important to show applicant commitment and so will award 5 points for those meeting the twenty percent match with cash funds. Applicants with Planning projects who elect to contribute an amount greater than twenty percent of the grant award will receive additional points for their demonstration of local commitment. The Commission also determined that applicants with Design/Construction projects would ultimately contribute an amount greater than twenty percent of the grant award due to the level of cost associated with design and construction, therefore nullifying the need to apply a local match requirement for Design/Construction projects.

The development of Readiness to Proceed criteria for both Design/Construction and for Planning projects is an important criteria that will assist in ensuring that all funds will be allocated and expended within a three-year timeframe pursuant to HB-13-1191. The amount made available for Design/Construction projects and for Planning projects will be determined and identified at the time the Request for Applications has been noticed. In order to properly address the variability in demand for funding of Design/Construction and/or Planning, the Commission has provided the ability to transfer funds between Design/Construction and Planning projects to satisfactorily accommodate the demand indicated by the number and type of project applications. The Commission has also determined that it may be necessary to increase the amount of individual Nutrient Management Grant awards to ensure that all funds have been allocated to eligible entities.

**55.30 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE REGARDING THE WATER QUALITY IMPROVEMENT FUND, MAY 12, 2014 RULEMAKING, EFFECTIVE JUNE 30, 2014**

The provisions of Sections 25-8-202, 25-8-308, and 25-8-608, C.R.S. provide the specific statutory authority for adoption of the attached regulations. The commission, in compliance with section 24-4-103(4), C.R.S., has adopted the following statement of basis and purpose.

### **BASIS AND PURPOSE**

During the 2014 legislative session the General Assembly created a new program under HB14-1002 entitled the Natural Disaster Grant Fund. HB14-1002 requires the commission to promulgate rules necessary to administer the program. The commission determined that Regulation No. 55, the Water Quality Improvement Fund, was the most appropriate regulation to amend. In order to assist parties submitting a request for applications, and in order to provide a transparent process for allocation and award of the funds, the commission created section 55.9, Natural Disaster Grant Fund. This section established four subsections for administering the program: entity eligibility, project eligibility, award process and funding allocation and project prioritization. Entities eligible for funding under this section include local governments, including local governments accepting grants on behalf of and in coordination with not-for-profit water systems, for the planning, design, construction, improvement, renovation or reconstruction of domestic wastewater treatment works or public drinking water systems that have been impacted, damaged or destroyed in connection with a natural disaster. Further, local governments assisting with the repair and restoration of on-site wastewater treatment systems as defined in section 25-10-103(12), are eligible for funding.

In alignment with HB14-1002, the commission has determined that only the above eligible local governments located in a county for which the governor has declared a disaster emergency by executive order or proclamation under section 24-33.5-704, C.R.S. are eligible to receive funds under the Natural Disaster Grant Fund.

In order to address on-site wastewater treatment systems that have been impacted by the September 2013 flood, the commission determined that a portion of the State Fiscal Year14-15 appropriation would be set-aside to assist local governments as determined by a stakeholder process.

In order to maximize other funding sources, the commission felt it was important to allow these grant moneys to be used as matching funds required to secure any other state and federal funding for the planning, design, construction, improvement, renovation or reconstruction of drinking water and wastewater infrastructure.

The project prioritization criteria that were developed for the Natural Disaster Grant Fund were designed to reflect language contained in HB14-1002 which emphasized priority to be given to eligible applicants who would be the most financially burdened by the costs associated with incorporating the necessary improvements or adaptations to their domestic wastewater treatment works or public drinking water systems. The commission also felt it was important to further prioritize projects based on population criteria, financial affordability factors, regionalization, utilization of multiple funding sources, readiness to proceed and impacts from the September 2013 flood necessary for planning, design, construction, improvements, renovation or reconstruction, and other factors pertinent to HB14-1002.

To properly address the variability in demand between the domestic wastewater treatment works, public drinking water systems and on-site wastewater systems the commission provides the ability to transfer funds between the Natural Disaster Grant Fund and a set-aside for on-site wastewater treatment systems. The commission has also determined that it may be necessary to increase the amount of grant awards in priority order, highest to lowest, until all of the funds have been allocated or the application demand has been met subsequent to any transfer between the main fund and the on-site wastewater treatment system set-aside.

**55.31 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE REGARDING STATE FUNDED WATER AND WASTEWATER INFRASTRUCTURE PROGRAMS, AUGUST 11, 2014 RULEMAKING, EFFECTIVE SEPTEMBER 30, 2014**

The provisions of sections 25-1.5-208, 25-8-202(1)(g), 25-8-608(1.7), 25-8-608.5, and 25-8-608.7, C.R.S., provide the specific statutory authority for adoption of the attached regulation. The Water Quality Control Commission has adopted the following statement of basis and purpose in compliance with section 24-4-103(4), C.R.S.

### **BASIS AND PURPOSE**

Due to an increase in funding programs provided by the Colorado General Assembly, the commission felt it was important to consolidate all state funded programs into one regulation. Therefore, the commission renamed Regulation #55 from the Water Quality Improvement Fund to State Funded Water and Wastewater Infrastructure Programs, which now encompasses the Water Quality Improvement Fund, the Nutrient Management Grant Fund, the Natural Disaster Grant Fund, and the Small Communities Water and Wastewater Grant Fund.

Specific changes to Regulation #55 include the following:

- The authority, scope, and purpose was combined for all state funded grant funds in section 55.1
- Section 55.2 is now reserved for definitions applicable to all state funded programs listed in the regulation, which now includes new definitions for the terms “pollution,” “beneficial use,” “consolidation,” and “waterborne disease outbreak” and various edits to existing definitions
- Previous Water Quality Improvement Fund sections have been renamed to include other state funded grant funds
- Section 55.6 Small Communities Water and Wastewater Grant Fund was added as a result of Senate Bill 14-025
- Each state funded program title was changed to include the word “criteria” and is listed in its own section:
  - 55.3 Water Quality Improvement Fund Criteria
  - 55.4 Nutrient Management Grant Fund Criteria
  - 55.5 Natural Disaster Grant Fund Criteria
  - 55.6 Small Communities Water and Wastewater Grant Fund Criteria
- Various editorial corrections have been made to align with other regulations or to provide clarity

### **New Provisions for Administration of the Small Communities Water and Wastewater Grant Fund**

The Water Quality Control Commission's Regulations #53 and #54 provided the rules for the Water Quality Control Division to administer two separate small community grant programs under two statutes: grants for drinking water in section 25-1.5-208 C.R.S., and grants for wastewater in section 25-8-703 C.R.S. In 2009, Senate Bill 09-165 amended section 25-1.5-208, C.R.S. by providing a continuous source of revenue from the severance tax trust fund. The legislation directed an annual transfer of up to \$10 million to the drinking water grant program after revenues from the fund exceeded \$201.5 million. However, this bill only amended the drinking water statute and did not provide the same continuous source of revenue for wastewater, which made it unclear that funds could be used for both drinking water and wastewater. As a result, SB 14-025 was introduced and signed into law on February 27, 2014 to clarify that drinking water and wastewater projects are eligible under the small community grant program.

Since SB 14-025 combined both water and wastewater small community grant programs, the commission

determined it was important to be consistent with legislation and have one regulation for program administration. The commission therefore repealed Regulation #53 for the Domestic Wastewater Treatment Grant Funding System and Regulation #54 for the Drinking Water Grant Fund as part of this rule adoption. In addition, the Commission incorporated all statements of basis and purpose from Regulations #53 and #54 into Regulation #55.

In order to administer the newly-combined Small Communities Water and Wastewater Grant Fund, the commission added sections 55.1(4) and 55.6 to Regulation #55. The following information lists the commission's actions for the Small Community Grant Fund:

- In alignment with SB14-025, the commission added section 55.1(4) and has determined that governmental agencies, including counties, and not-for-profit public water systems, as defined in section 25-1.5-201 (1) C.R.S., which serve a population of not more than five thousand people are eligible to apply for funds for the planning, design, and construction of public water systems.
- In order to assist parties submitting applications, and in order to provide an equitable and transparent process for allocation and award of funds, the commission created section 55.6, Small Communities Water and Wastewater Grant Program Criteria. This section established four subsections for administering the program: entity eligibility, project eligibility, award process and funding allocation, and project prioritization for both drinking water and wastewater projects.
- The project prioritization criteria that were developed for the Small Communities Water and Wastewater Grant Fund were designed to reflect language contained in SB 14-025 which emphasized priority to be given to eligible applicants who have the greatest financial need. The commission felt it was important to further prioritize projects based on population criteria, water quality and public health protection, compliance, and readiness to proceed.

**John W. Suthers**  
Attorney General

**Cynthia H. Coffman**  
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**State of Colorado**  
**Department of Law**  
**Office of the Attorney General**

Tracking number: 2014-00569

**Opinion of the Attorney General rendered in connection with the rules adopted by the**  
**Water Quality Control Commission (1002 Series)**

**on 08/11/2014**

**5 CCR 1002-53**

**REGULATION NO. 53 - DOMESTIC WASTEWATER TREATMENT GRANT FUNDING SYSTEM**

The above-referenced rules were submitted to this office on 08/12/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

August 20, 2014 16:12:23

**John W. Suthers**  
Attorney General  
by Daniel D. Domenico  
Solicitor General

## **Permanent Rules Adopted**

### **Department**

Department of Public Health and Environment

### **Agency**

Water Quality Control Commission (1002 Series)

### **CCR number**

5 CCR 1002-54

### **Rule title**

5 CCR 1002-54 REGULATION NO. 54 - STATE OF COLORADO: DRINKING WATER  
GRANT PROGRAM 1 - eff 09/30/2014

### **Effective date**

09/30/2014



**DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**  
**WATER QUALITY CONTROL COMMISSION**

**5 CCR 1002-54**

**REGULATION NO. 54**

**DRINKING WATER GRANT FUND**

**54.1 — AUTHORITY**

Section 25-1.5-208, C.R.S., as amended, provides authority for the Drinking Water Grant Fund to provide financial assistance to eligible public water systems (PWS). Section 25-1.5-208(1)(b) provides that the Water Quality Control Commission (Commission) shall promulgate rules for the administration of any appropriated grant funds and for prioritizing projects based upon public health impact and compliance with applicable regulations.

**54.2 — PURPOSE**

The purpose of the Drinking Water Grant Fund is to provide financial assistance to governmental agencies and not-for-profit public water systems as well as to counties representing unincorporated areas serving populations of not more than 5,000 people. Eligible projects include consolidation, planning, design and/or construction of water treatment systems.

An annual Intended Use Plan (IUP) is developed by the Water Quality Control Division (Division) and approved by the Commission. The IUP provides 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 drinking water project needs.

The project priority system is intended to establish priorities for the grant fund that protect and improve the public health and safety through increased reliability of drinking water supplies in Colorado.

**54.3 — DEFINITIONS**

Section 1.5 of the Colorado Primary Drinking Water Regulations (CPDWR) contains additional definitions that may apply to this rule.

- (1) — “Beneficial Use” — The use of water treatment plant sludge in conjunction with wastewater treatment plant sludge to act as a soil conditioner or low grade fertilizer for the promotion of vegetative growth on land and that meet the requirements of the state Biosolids Regulations.
- (2) — “Consolidation” — 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 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 maximum contaminant level (MCL) violation or a treatment technique violation. Funding for these projects must result in compliance with existing standards.
- (a) ~~An acute health hazard includes violations of Surface Water Treatment Rule (SWTR) treatment technique requirements, bacteriological standards, and nitrite/nitrate levels. Acute contaminant health effects can occur immediately or within a short period of time.~~
- (b) ~~A chronic health hazard includes violations of all MCLs (other than those listed as acute) or SWTR treatment technique requirements. Chronic contaminant health effects occur after years of exposure.~~
- (c) ~~A potential health hazard includes a situation where a PWS has periodically exceeded an MCL, has levels greater than 50 percent of an MCL on a regular basis, or has short term problems meeting a treatment technique requirement.~~
- (5) ~~“Not For Profit Public Water Systems”~~—PWSs that are operated by entities such as homeowners associations that are registered as a nonprofit association or nonprofit corporation with the Colorado Secretary of State.
- (6) ~~“Other Future Needs”~~—Those needs in situations where a facility 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 Safe Drinking Water Act.
- (7) ~~“Project”~~—A specific improvement to a public water system that may include planning, design, construction or consolidation.
- (8) ~~“Public Water System” (PWS)~~—A system for the provision to the public of piped water for human consumption, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals. Such term includes:
- (a) ~~Any collection, treatment, storage, and distribution facilities under control of the operator 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) ~~“Source Water Protection”~~—Structural or nonstructural source water protection activities done in addition to area delineation and contaminant assessment.
- (10) ~~“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 the PWS or that are funded in whole or in part by the PWS and water meters that are funded and owned by the PWS. 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.

#### **54.4 INTENDED USE PLAN PROCEDURES**

The Division is required to develop an IUP including a comprehensive list of eligible projects. Annually the Division will conduct a statewide survey of infrastructure needs to identify projects for Project Eligibility List. The Division shall recommend the IUP to the Commission for final agency action at a public hearing, and shall also provide for public notice and an opportunity to comment.

The IUP shall include:

- (1) — The Project Eligibility List,
- (2) — Criteria and method used for distribution of funds,
- (3) — Drinking Water Grant Fund Activities, and
- (4) — Drinking Water Grant Fund Goals

#### **54.5 — PROJECT ELIGIBILITY LIST**

The Project Eligibility List is the comprehensive list of eligible projects showing current and future infrastructure needs. Each year the Division shall review, update and compile additions and modifications to the Project Eligibility List and recommend such additions and modifications to the Commission.

Project Eligibility List Categories are determined based on information provided by the applicant during the Annual Eligibility List Survey process. If sufficient funds are not available to fund all requests projects will be funded in priority order. However, exceptions for funding out of priority order shall be allowed due to one or more of the following reasons:

- (1) — The entity is not ready to proceed with the project;
- (2) — The entity does not wish to participate in the grant fund, or they have received funding from other sources;
- (3) — The entity (on the list) had an emergency situation occur during the funding year; or
- (4) — The entity is not approved for funding because of technical deficiencies.

#### **54.6 — PRIORITY SYSTEM**

All PWSs with identified infrastructure needs may be included in one of the categories listed below.

- (1) — Eligible Project Criteria

Categories were developed to emphasize the most immediate public health and compliance issues. Projects on the Project Eligibility List will be classified by category 1, 2, 3, 4, or 5 below, with “1” being the highest priority. Project Eligibility List Categories are determined based on information provided by the applicant during the Annual Eligibility List Survey process. Based upon receipt and review of a Preliminary Engineering Report and a grant application, the assigned Eligibility List Category may be revised, during the prioritization process, to more accurately reflect the proposed project.

- (2) — Categories By Priority Ranking

- (a) — 1 - Acute Health Hazard. The Division has identified continuous violation of an acute maximum contaminant level (MCL) or a surface water treatment rule (SWTR) treatment technique requirement.
- (b) — 2 - Chronic (long term) Health Hazard. The Division has identified a continuous violation of an MCL or an SWTR treatment technique requirement for a chronic contaminant.
- (c) — 3 - Potential Acute Health Hazard. The PWS has periodically exceeded an acute MCL, has levels greater than 50 percent of an acute MCL on a regular basis, or has short term problems meeting an SWTR treatment technique requirement that can be controlled temporarily by operational means.

- (d) ~~4 — Potential Chronic Health Hazard.~~ The PWS has periodically exceeded a chronic MCL, has levels greater than 50 percent of a chronic MCL on a regular basis, or has short term problems meeting other treatment technique requirements.
- (e) ~~5 — Other Future Needs.~~ The PWS 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 Safe Drinking Water Act.

(3) ~~Priority Point Assignments Within Each Category~~

If it is determined that the Drinking Water Grant Program Fund lacks sufficient funds to cover requests for all eligible projects that are ready to proceed, projects will be funded beginning with the highest priority categories. Category 1 projects will be funded prior to Category 2 projects, which will be funded prior to Category 3 projects, which will be funded prior to Category 4 projects, which will be funded prior to Category 5 projects.

Within each category, projects will be further prioritized using the following Priority Point Assignments.

- (a) ~~Population.~~ Points shall be assigned to a PWS based on the following schedule of population served by the project, with emphasis given to small communities:
 

25 to 1,000	20 points
1,001 to 3,300	15 points
3,301 to 10,000	10 points
Over 10,000	5 points
- (b) ~~Financial Need.~~ Points shall be assigned to a PWS in accordance with the following "financial need criteria:"
  - (i) ~~Ability to pay (annual water service fee as a % of median household income):~~

over 3%	20 points
over 2%; up to 3%	15 points
over 1%; up to 2%	10 points
  - (ii) ~~Local burden (total project cost per equivalent residential tap):~~

Over \$5,000	20 points
Over \$3,500	15 points
Over \$2,000	10 points
- (c) ~~Consolidation.~~ Fifteen points shall be assigned to a PWS if the project includes consolidating two or more PWS.
- (d) ~~Water Conservation.~~ Five points shall be assigned to a PWS if the PWS implements a water conservation measure.
- (e) ~~Source Water Protection.~~ Two points shall be assigned to a PWS if the governmental agency implements source water protection measures.
- (f) ~~Beneficial Use of Sludge.~~ Two points shall be assigned to a PWS if the governmental agency intends to utilize water treatment plant sludge for a beneficial use as defined herein.

- (g) ~~Health Risk.~~ To further clarify the ranking of PWS projects, the Division shall assign up to twenty points for PWS health risks. Determination of the health risk will be made based upon the type and level of contaminant present within categories.

#### **54.7. FUNDING CRITERIA**

Funding is dependent upon appropriations from the State Legislature and will be provided for eligible projects that may include consolidation costs, planning, design and/or construction costs. Funding may be provided when:

- (1) ~~The public water system is ready to proceed with the project; and~~
- (2) ~~A grant application is submitted to the Division by the deadline established in the annual IUP. The Division shall submit the application to the Division of Local Government for its review and determination of financial need; and~~
- (3) ~~Funds are available. If it is determined that the Drinking Water Grant Program Fund lacks sufficient funds to cover grants for all eligible projects that are ready to proceed, projects will be funded beginning with the highest priority categories.~~

Grant funds cannot be used to reimburse for costs related to fees and/or penalties assessed by the Division.

#### **54.8-54.9 RESERVED**

#### **54.10 STATEMENT OF BASIS AND PURPOSE**

~~These rules establish a system to administer grant funds and to provide for a mechanism to prioritize eligible projects. The rules allow lower priority drinking water systems to receive funding ahead of systems with higher priority if the higher priority system does not apply for the funding or is not ready to proceed with its project.~~

~~The Drinking Water Grant Program will provide financial assistance to governmental agencies and not-for-profit public water systems serving populations of not more than 5,000 people for projects including consolidation, planning, design and/or construction of public water systems.~~

~~The Drinking Water Grant Program Plan, which includes eligible projects, will be developed by the WQCD and submitted to the Board of Health (Board) once each year. A public will be held by the Board to receive input on the Plan. Following the meeting, any changes will be incorporated and the final Plan shall be approved by the Board.~~

~~These rules are similar to those adopted by the Board for the Drinking Water Revolving Fund. The rules are also similar to those adopted by the Water Quality Control Commission (Commission) for the Water Pollution Control Revolving Fund and the Domestic Wastewater Treatment Grant Program. The rule-adoption authority for wastewater rests with the Commission while the drinking water rules are adopted under the authority of the Board of Health.~~

#### **54.11 STATEMENT OF BASIS AND PURPOSE (JULY 14, 2008 RULEMAKING, EFFECTIVE DATE JANUARY 1, 2009)**

~~Sections 25-1.5-208 and 25-1.5-208(1)(b) 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**

Changes to Section 25-1.5-208 C.R.S. moved the authority for promulgating rules and approving the annual intended use plan from the Colorado Board of Health to the Water Quality Control Commission (Commission). Updates to these rules reflect this change in authority.

Changes to the Rules have also been made that streamline the Intended Use Plan process. The categorization and prioritization system that is included in the Drinking Water Revolving Loan Fund Rules have been incorporated into the Drinking Water Grant Program Rules. These revisions will enable the Division to develop one Intended Use Plan and Project Eligibility List, that will be used for both the grant and loan funds.

**John W. Suthers**

Attorney General

**Cynthia H. Coffman**

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**State of Colorado  
Department of Law**

**Office of the Attorney General**

Tracking number: 2014-00570

**Opinion of the Attorney General rendered in connection with the rules adopted by the  
Water Quality Control Commission (1002 Series)**

**on 08/11/2014**

**5 CCR 1002-54**

**REGULATION NO. 54 - STATE OF COLORADO: DRINKING WATER GRANT PROGRAM**

The above-referenced rules were submitted to this office on 08/12/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

August 20, 2014 16:13:04

**John W. Suthers**

Attorney General

by Daniel D. Domenico

Solicitor General

## **Permanent Rules Adopted**

### **Department**

Department of Public Health and Environment

### **Agency**

Water Quality Control Commission (1002 Series)

### **CCR number**

5 CCR 1002-55

### **Rule title**

5 CCR 1002-55 REGULATION NO. 55 - WATER QUALITY IMPROVEMENT FUND 1 -  
eff 09/30/2014

### **Effective date**

09/30/2014



# DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

## Water Quality Control Commission

5 CCR 1002-55

### STATE FUNDED WATER AND WASTEWATER INFRASTRUCTURE PROGRAMS

#### REGULATION NO. 55

##### 55.1 AUTHORITY, SCOPE AND PURPOSE

###### (1) Water Quality Improvement Fund

House Bill 06-1337 created the Water Quality Improvement Fund codified in section 25-8-608, C.R.S., of the Colorado Water Quality Control Act. House Bill 11-1026 amended the statute to authorize grants for stormwater management training and best practices training to prevent or reduce the pollution of state waters. Section 25-8-608(1.7)(c), C.R.S. provides the Water Quality Control Commission ("commission") with the authority to promulgate, implement and administer this regulation.

Funding is dependent upon annual appropriations by the Colorado General Assembly and is based on violations that were committed on or after May 26, 2006. The resulting penalties collected by the Water Quality Control Division ("division") are transmitted to the state treasurer for deposit to the credit of the fund.

The purpose of the fund is to improve water quality in Colorado by providing grant funds for water quality improvement projects using civil penalties from water quality violations.

###### (2) Nutrients Management Grant Fund

During the 2013 legislative session the General Assembly created a new program under House Bill 13-1191 entitled the Nutrient Grant Fund. Codified in section 25-8-608.5, C.R.S., HB 13-1191 authorizes the commission to promulgate rules necessary to administer the program as an amendment to Regulation #55, the Water Quality Improvement Fund.

The purpose of the fund is to provide assistance to Phase One Domestic Wastewater Treatment Works as defined in Regulation #85.

###### (3) Natural Disaster Grant Fund

House Bill 14-1002 created the Natural Disaster Grant Fund to be codified in section 25-8-608.7, C.R.S. – concerning the establishment of a grant program under the Colorado Water Quality Control Act to repair water infrastructure impacted by a natural disaster. The purpose of the fund is to award grants to local governments, including local governments accepting grants on behalf of and in coordination with not-for-profit public water systems, under rules promulgated by the commission for the planning, design, construction, improvement, renovation or reconstruction of domestic wastewater treatment works and public drinking water systems that have been impacted, damaged or destroyed in connection with a natural disaster. The division may only award grants to be used in counties for which the governor has declared a disaster emergency by executive order or proclamation under section 24-33.5-704, C.R.S.

Section 25-8-608.7(3), C.R.S. provides the Water Quality Control Commission with the authority to promulgate rules necessary to implement and administer the Natural Disaster Grant Fund.

(4) Small Communities Water and Wastewater Grant Fund

Senate Bill 14-025 revised and consolidated the Small Communities Water and Wastewater Grant Fund to be codified in section 25-1.5-208, C.R.S. – concerning the establishment of a grant program under the Colorado Water Quality Control Act to assist suppliers of water and domestic wastewater treatment works that serve a population of not more than five thousand people with meeting their responsibilities with respect to the protection of public health and water quality.

Continuous funding for the Small Communities Water and Wastewater Grant Fund is provided in section 39-29-109(2)(a)(III) C.R.S., through money transferred to the fund pursuant to section 39-29-109(2)(a)(II) C.R.S. and any other moneys transferred to the fund by the General Assembly. Moneys for the fund originate from the severance tax perpetual base fund, up to \$10 million, and will be applied to both drinking water projects and wastewater projects.

Section 25-1.5-208(2), C.R.S. provides the commission with the authority to promulgate rules necessary to implement and administer the Small Communities Water and Wastewater Grant Program.

**55.2 DEFINITIONS**

- (1) "Beneficial Use" - means the use of water treatment plant sludge in conjunction with wastewater treatment plant sludge to act as a soil conditioner or low grade fertilizer for the promotion of vegetative growth on land and that meets the requirements of the state Biosolids Regulations.
- (2) "Best Management Practices" - means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of "state waters". Best Management Practices also include treatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.
- (3) "Consolidation" - means 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 division to guarantee the facilities will consolidate.
- (4) "Governmental Agency" – means any municipality, regional commission, county (or county on behalf of unincorporated areas), metropolitan district offering sanitation service, sanitation district used for funding a domestic wastewater treatment works project, water and sanitation district, water conservancy district, metropolitan sewage disposal district, other special district used for funding a project under this regulation.
- (5) "Impacted Water Body" – means a water body in which the designated use(s) of recreation, aquatic life, water supply, agriculture, and/or wetlands have been affected by pollutants associated with a violation of the Act, permit, control regulation, or final cease and desist order or clean-up order.
- (6) "Nonpoint source" – means a diffused pollution source that is not regulated as a point source, including, but not limited to, sources that are often associated with agriculture, inactive or abandoned mining, silviculture, urban runoff, or runoff from construction activities. Nonpoint source pollution does not emanate from a discernible, confined, and discrete conveyance (such as a single pipe) but generally results from land runoff, precipitation, atmospheric deposition, or percolation.
- (7) "Pollution" – means the man-made, man-induced, or natural alteration of the physical, chemical, biological, and radiological integrity of water.

- (8) “Waterborne Disease Outbreak” – means the significant occurrence of acute infectious illness, epidemiologically associated with the ingestion of water from a public water system which is deficient in treatment, as determined by the appropriate local or State agency.

### **55.3 WATER QUALITY IMPROVEMENT FUND CRITERIA**

(1) Entity Eligibility

Entities eligible for grants include: 1) governmental agencies; 2) publicly owned water systems; 3) private not- for- profit public water systems; 4) not- for- profit watershed groups; 5) not- for- profit stormwater program administrator in accordance with 25-8-802 C.R.S.; 6) not- for- profit training provider; and 7) private landowners impacted by a water quality violation.

Entities who pay a Colorado Water Quality Control Act civil penalty are prohibited from receiving a grant from this fund for a period of 5 years from the date of the payment of the penalty.

(2) Project Eligibility

As provided for under section 25-8-608 (1.7) (a), C.R.S., the fund will provide grants to the following project categories:

Category 1 – Stormwater management training and best management practices training to reduce the pollution of state waters.

Category 2 - Projects that improve the water quality in the community or water body which has been impacted by a water quality violation that resulted in a penalty being imposed.

Category 3 – Planning, design, construction, or repair of stormwater projects and domestic wastewater treatment facilities identified on the current fiscal year’s Water Pollution Control Revolving Fund Intended Use Plan.

Category 4 - Nonfederal match funding for the current fiscal year’s nonpoint source projects as approved by the commission.

(3) Funding Allocation

All civil penalties collected by the division shall be transmitted to the state treasurer for deposit to the credit of the fund created by section 25-8-502, C.R.S., for violations committed on or after May 26, 2006 and shall be subject to annual appropriations by the Colorado General Assembly. The division will post on its web page a list of violators that have paid into the Water Quality Improvement Fund. The following allocations from the fund will be made:

Category 1 – for State Fiscal Year 2012-2013 the division will allocate up to \$150,000 of available funds with no one project initially receiving more than \$50,000. If the entire \$150,000 has not been fully utilized, the division will allocate the remaining Category 1 funds within the year per its prioritization procedures to eligible Category 1 project(s) which may result in certain projects ultimately receiving more than \$50,000.

For subsequent years thereafter, up to \$50,000 of available funds will be allocated.

Category 2 – 10% of available funds following allocations to Category 1 projects.

Category 3 – 60% of available funds following allocations to Category 1 projects; no one project can receive more than 25% of the available funds allocated to this category.

Category 4 – 30% of available funds following allocations to Category 1 projects.

Any funds not utilized in one category will be redistributed among the remaining categories based on their relative percentage of funding. The division will retain five percent (5%) of the moneys allocated annually to the fund to cover the cost of administering the fund. Funds may be carried over from previous years' appropriations and reallocated based upon the above distribution on an annual basis.

(4) Project Prioritization Criteria

If the fund lacks sufficient funds to cover all requests within each category, Priority 1 projects will be funded prior to Priority 2 projects, which will be funded prior to Priority 3 projects, which will be funded prior to Priority 4 projects. If it is determined that there are insufficient funds, further prioritization criteria will be applied as identified under each category in this section. The division may reallocate funding among categories based upon lack of requests or eligible projects within any category.

Criteria for funding project proposals within each category as described in Section 55.3 are as follows:

Category 1 – stormwater management training and best management practices training to reduce the pollution of state waters.

Priority 1 – Projects that implement stormwater management and best management practices training not previously available in Colorado, or previously limited in accessibility.

Priority 2 – Projects that will expand the content or availability of existing stormwater management and best management practices training.

Priority will be given to training providers that can demonstrate that training content will be relevant to implementation in Colorado with regards to Colorado's hydrology, climate and water rights, as applicable.

Priority will also be given to training providers that provide no- or low-cost training.

Additional prioritization criteria will include the expected water quality benefits, total population receiving training, availability of match, and readiness to proceed. Specific points available in each of these categories and tie breaking criteria will be included as an attachment to the request for application.

Category 2 - Projects that improve the water quality in the community or water body which has been impacted by a water quality violation.

Priority 1 – Projects that address impacts to a water supply designated use.

Priority 2 – Projects that address impacts to a recreation designated use.

Priority 3 – Projects that address impacts to an aquatic life designated use.

Priority 4 – Projects that address impacts to an agricultural or wetlands designated use.

Additional prioritization criteria will include financial/affordability, water quality benefits, permit compliance, readiness to proceed, and availability of match. Specific points available in each of these categories and tie breaking criteria will be included as an

attachment to the request for application.

Category 3 - Planning, design, construction, or repair of stormwater projects and domestic wastewater treatment facilities identified on the current fiscal year's Water Pollution Control Revolving Fund Intended Use Plan.

Priority 1 – Projects that improve water quality in the community or water body impacted by a violation.

Priority 2 – Planning, design, construction, or repair of stormwater projects.

Priority 3 – Projects identified on the current year's Water Pollution Control Revolving Fund Intended Use Plan.

Additional prioritization criteria will include financial/affordability, water quality benefits, permit compliance, readiness to proceed, and availability of match. Specific points available in each of these categories and tie breaking criteria will be included as an attachment to the request for application.

Category 4 - Nonfederal match funding for nonpoint source projects.

Priority 1 – Projects that reduce or eliminate water quality impairments identified in Regulation #93 (5 CCR 1002-93), Colorado's Section 303(d) List.

Priority 2 – Projects that protect any established designated water quality use.

(5) Notification and Reporting

Applications for Category 1, 2 and 3 projects will be noticed and accepted by the division after the division determines availability of appropriation. Applicants will be responsible for demonstrating the impacts of the violation on the affected water body or community, and the related water quality improvement project benefits. The division will accept applications for Category 4 projects in accordance with the annual nonpoint source project schedule.

The division will evaluate all applications and determine the grant award(s) for each category based on the criteria in the Entity Eligibility Section, Project Eligibility Section, Funding Allocation Section and Project Prioritization Section.

Grant recipients will provide a final project report within 60 days of completion of the project. Final project reports shall include a detailed description of the project as implemented, all problems encountered and the solutions thereto, itemized project costs, a declaration that the project has been fully implemented as approved, and a description of the environmental and public health benefits resulting from implementation of the project. Information on the grant recipients, including project description and grant award, will be reported in the division's Annual Report to the commission, in accordance with section 25-8-305, C.R.S.

**55.4 NUTRIENTS MANAGEMENT GRANT FUND CRITERIA**

(1) Entity Eligibility

Eligibility is for facilities subject to section 85.5(1)(a)(iii), not including those facilities that are eligible for an exception under 85.5(3)(b). Domestic Wastewater Treatment Works with capacity greater than two million gallons per day that are owned or operated by a local government and discharge to a high-priority watershed as designated by the division are eligible to apply for a Nutrients Management Grant under this section.

(2) Project Eligibility

Projects for planning, design, construction, and/or improvement of domestic wastewater treatment works to comply with the effluent limitations in section 85.5(1)(a)(iii) are eligible for grants.

(3) Project Prioritization

The division shall rank each project based on the priority score of each project. Projects will be funded in priority order from highest to lowest. The division shall consider the following categories to determine the priority score of each Nutrient Management Grant project proposal:

- (a) The division shall evaluate the financial and affordability needs of the proposed project. Financial need shall be determined using a points system that ranks projects based on the median household income of the service area, estimated existing monthly sewer user charges as a percentage of median household income, and the amount of total sewer debt per connection. For eligible facilities that have more than one ownership entity, the division will use an average for the combined service area for each of the applicable scoring elements. In the case of Special Districts, the division will use census block data, if available, to determine the median household income for the area in which the District is located. If census block data is not available, the division will defer to the median household income for the County in which the District is located.

A local match component of twenty percent (20%) of the total grant award will be applied to planning grants only. Local commitment to the proposed planning project shall be determined using a points system that ranks projects based on the percentage of match in the form of liquid capital, or funding from other sources that an applicant has committed to the project based on the estimated total project costs.

Points shall be assigned based on the following criteria:

- i) Median Household Income (MHI) of service area
- |                                   |           |
|-----------------------------------|-----------|
| <75% of State MHI                 | 20 points |
| Between 75% and 85% of State MHI  | 15 points |
| Between 86% and 95% of State MHI  | 10 points |
| Between 96% and 100% of State MHI | 5 points  |
| >100% of State MHI                | 0 points  |
- ii) User Fees (existing sewer fees/area MHI)
- |   |           |
|---|-----------|
| Rates are > 2.0% of the service area's MHI          | 20 points |
| Rates are >1.5% and ≤2.0% of the service area's MHI | 15 points |
| Rates are >1.0% and ≤1.5% of the service area's MHI | 10 points |
| Rates are ≤1.0% of the service area's MHI           | 5 points  |
- iii) Total Sewer Debt per Connection (existing debt/number of connections)
- |  |           |
|--|-----------|
| > \$1,500 per connection                 | 20 points |
| Between \$1,000 - \$1,500 per connection | 15 points |
| Between \$500-\$999 per connection       | 10 points |
| < \$500 per connection                   | 5 points  |

iv) Percent of Local Match Contribution (for Planning Grants only)

> 50%	20 points
Between 35% and 50%	15 points
Between 20% and 34%	10 points
< 20%	0 points

- (b) The division shall evaluate the degree to which the project improves or protects surface water quality by assessing the characteristics of the stream receiving effluent discharge. This includes determining whether the receiving stream has been classified as a cold water stream, a warm water stream, and the dilution rate of the receiving stream.

Points for the receiving stream characteristics shall be assigned based on the following criteria:

i) Receiving Stream Characteristics

Cold water stream	15 points
Warm water stream	10 points

ii) Dilution Rates

Dilution rates <2:1 are considered "low"	15 points
Dilution rates <10:1 but ≥ 2:1 are considered "intermediate"	10 points
Dilution rates <50:1 but ≥10:1 are considered "high"	5 points
Dilution rates ≥ 50:1 are considered "very high"	0 points

- (c) The division shall also consider whether an entity has elected to incorporate a watershed approach to nutrient management that addresses the protection of surface and/or groundwater resources through either the planning and/or development of non-point source or agricultural best management practices both upstream and downstream from the facility; or the entity has elected to participate in or facilitate Community Action Partnerships, project sponsorship, or conduit financing mechanisms to enable other community stakeholders who will undertake nutrient, non-point source, or agricultural monitoring efforts both upstream and downstream of the facility. Applicants that incorporate such efforts, in addition to their treatment facility upgrade and adaptations, shall be awarded 10 points.

- (d) The division shall evaluate the impacts of operational cost for design/construction projects and for planning projects with separate criteria.

The operational costs for design/construction projects will evaluate nutrient treatment upgrades and adaptations to existing Domestic Wastewater Treatment facilities based on cost per million gallons treated. Operational cost estimates are based on broad technology types available for nutrient removal and benchmarks are based on national cost averages published in the U.S. EPA (2008) Municipal Nutrient Removal Technologies Reference Document Volume I; Chapter 4, Cost Factors, which is incorporated herein by reference. This incorporation does not apply to later amendments or editions of the document, and is available via internet:

<http://water.epa.gov/scitech/wastetech/upload/mnrt-volume1.pdf>, or from the Water Quality Control Commission Office, 4300 Cherry Creek Drive South, Denver, CO 80246, 303-692-3463.

Points for design/construction projects shall be assigned based on the following criteria:

- i) Estimated Operational Cost per million gallons treated
  - <\$75 per million gallons treated 5 points
  - Between \$75 - \$200 per million gallons treated 10 points
  - Between \$199 and \$500 per million gallons treated 15 points
  - >\$500 per million gallons treated 20 points
- ii) The division shall evaluate the costs associated with planning projects that incorporate one or more of the following nutrient management planning methodologies. For each of the following methodologies that are included, five points will be awarded.
  - Water Quality Monitoring Plan Development 5 points
  - Operational Optimization Study 5 points
  - Operations Pilot Testing of Nutrient Removal Technology 5 points
  - Carbon Planning for Biological Nutrient Removal Technology 5 points
- (e) The division shall determine the level of environmental impacts as a result of nutrient loading based on the number of Single Family Equivalent units located within the service area. Points shall be assigned based on the following criteria:
  - i) Environmental impact based on number of Single Family Equivalents in Service Area
    - <10,000 5 points
    - Between 10,000 and 30,000 10 points
    - Between 30,001 and 50,000 15 points
    - Over 50,000 20 points
- (f) The division shall evaluate whether the applicant has a Utility Management Plan in place that includes one or more of the criteria referenced below. For each of the following criteria that are met, 5 points shall be assigned:
  - i) Secures a replacement fund for the rehabilitation and replacement of infrastructure as needed.
  - ii) Includes provisions addressing the proper training, licensing, and certification of operators required to adequately operate and maintain the selected wastewater treatment technology.
  - iii) Includes provisions ensuring that the facility has adequate in-house staffing, long-term management contracts, or partnerships with third-party providers to properly operate and maintain the facility.
  - iv) Provides sufficient revenue to meet operations and maintenance capital needs (operating revenue divided by the operating expense).
  - v) Includes mechanisms to protect infrastructure investments to ensure longevity and ongoing functionality of non-point source best management practices.
- (g) The division shall determine whether the project is ready to proceed with funding based



on the following indicators specific to design/construction projects. For each of the following criteria that are met, 5 points shall be assigned:

- i) Site Application has been submitted.
  - ii) Process Design Report has been submitted.
  - iii) Technical plans and specifications have been submitted.
- (h) The division shall determine whether the project is ready to proceed with funding based on the following indicators specific to planning projects. For each of the following criteria that are met, 5 points shall be assigned:
- i) Applicant has the required twenty percent (20%) local match secured and held in cash reserve.
  - ii) Engineer/Consultant(s) has been selected.
  - iii) Agreements with selected Engineer/Consultant(s) are in place.
- (i) In the event that two or more projects have the same priority score and rank, the division shall give priority to the project that is most ready to proceed with moving forward with financial assistance based on the readiness to proceed indicators specified in subsection 3(g) and (3)(h) above. If projects remain tied, priority will be given to the applicant that demonstrates the highest financial need pursuant to subsection 3(a).

(4) Funding Allocation and Awarding Process

The Colorado General Assembly created a Nutrients Management Grant Fund to assist eligible applicants with the costs associated with implementation of the Nutrients Management Control Regulation No.85. Funding is contingent upon final appropriation by the Colorado General Assembly. Pending appropriation, the division will develop a request for application to solicit projects for funding. If there are more requests than available funds, the division will prioritize projects based on the above criteria and will notify all applicants of their funding status after the establishment of a fundable list. The fundable list will be posted on the division website to identify the recipients of funds and the amount of each award.

Projects will be funded in priority order, highest to lowest, until all funds have been allocated. The division will determine the amount of funding to be made available for design/construction projects and the amount to be made available for planning projects. The division will have the authority to transfer funds between design/construction projects and planning projects as needed to sufficiently meet the demand indicated by the number of Nutrient Management Grant applications that are received. In the event that funds remain unallocated subsequent to a transfer of funds between project types, the division has the authority to increase the amount of grant awards in priority order, highest to lowest, until all of the funds have been allocated.

**55.5 NATURAL DISASTER GRANT FUND CRITERIA**

(1) Entity Eligibility

- (a) Local governments defined as governmental agencies in section 55.2 that own and operate domestic wastewater treatment works and public drinking water systems in a designated disaster emergency county by an executive order or proclamation under section 24-33.5-704, C.R.S.

- (b) Local governments accepting grants on behalf of and in coordination with not-for-profit public drinking water systems.
- (c) Local governments assisting with the repair and restoration of on-site wastewater treatment systems as defined in section 25-10-103(12), C.R.S.
- (d) If funds are transferred to the Nutrients Management Grant Fund pursuant to section 55.5(3)(d), eligible entities will be determined per section 55.4 of this regulation.

(2) Project Eligibility

- (a) Domestic wastewater treatment works, public drinking water systems and on-site wastewater treatment systems that have been impacted, damaged or destroyed in connection with the September 2013 flood, or future declared disaster emergencies.
- (b) Projects for the planning, design, construction, improvement, renovation or reconstruction of domestic wastewater treatment works or public drinking water systems that have been impacted, damaged or destroyed in connection with the September 2013 flood.
- (c) Grant moneys under this section may be used as matching funds required to secure any other state and federal funding for the planning, design, construction, improvement, renovation or reconstruction of drinking water and wastewater infrastructure.

(3) Award Process and Funding Allocation

- (a) Appropriations are subject to approval by the Colorado General Assembly, and funding is contingent upon such final appropriation. Pending appropriation, the division will administer the funds per the Natural Disaster Grant Fund rules identified in this section and prioritize projects based upon the criteria in section 55.5(4) below. The division will notify all applicants of their funding status after the establishment of a fundable list. The fundable list will be posted on the division website to identify the recipients of funds and the amount of each award.
- (b) A portion of the Natural Disaster Grant Fund will be set-aside to assist local governments with grants for on-site wastewater treatment systems that have been impacted as a result of the September 2013 flood. To sufficiently meet the demand indicated by the number of applications received and project type, the division has the authority to transfer funds between the set-aside for on-site wastewater treatment systems and the Natural Disaster Grant Fund. If a transfer occurs and project prioritization is required, the division will prioritize per section 55.5(4).
- (c) In the event that funds remain unallocated subsequent to a transfer of funds between the Natural Disaster Grant Fund and the on-site wastewater set-aside, the division has the authority to increase the amount of grant awards in priority order, highest to lowest, until all of the funds have been allocated or the application demand has been met.
- (d) On September 1, 2015, any unencumbered moneys remaining in the Natural Disaster Grant Fund will be transferred to the Nutrients Management Grant Fund, at which time the division will solicit a separate request for application per section 55.4, the Nutrients Management Grant Fund.

(4) Project Prioritization

- (a) If the demand for funding in the Natural Disaster Grant Fund exceeds the available funds, the division shall rank each project based on population criteria, financial affordability

factors, regionalization, utilization of multiple funding sources, readiness to proceed and impacts as a result of the September 2013 flood. The division will give priority to the applicants that have the lowest financial ability to pay. Specific point ranking criteria and associated points under each of the above factors will be included in the request for application. Projects will be funded in priority order from highest to lowest until all funds have been allocated.

- (b) Local governments receiving funds from the set-aside portion for the rehabilitation for on-site wastewater treatment systems impacted by the September 2013 flood will receive an equitable percentage of the funds requested. For example, if \$1 million is allocated to the set-aside portion and \$2 million is requested, each valid applicant will receive 50% of its application request.

## **55.6 SMALL COMMUNITIES WATER AND WASTEWATER GRANT FUND CRITERIA**

### **(1) Entity Eligibility**

- (a) The department, in the name of the state and to the extent that state funds are appropriated therefor, may enter into contracts with governmental agencies, including counties, and not-for-profit public water systems, as defined in section 25-1.5-201(1), which serve a population of not more than five thousand people, to grant moneys for the planning, design, and construction of public water systems designed to protect public health.
- (b) The department, in the name of the state and to the extent that state funds are appropriated therefor, may enter into contracts with governmental agencies, including counties, for domestic wastewater treatment works, as defined in section 25-8-103(5), which serve a population of not more than five thousand people which serve a population of not more than five thousand people, to grant moneys for eligible projects as defined in section 25-8-701(2).

### **(2) Project Eligibility**

- (a) Projects for the planning, design, and construction of public water systems or domestic wastewater treatment works that serve a population of not more than five thousand people and which are necessary for the protection of public health and water quality.

### **(3) Award Process and Funding Allocation**

- (a) The division will administer the funds per the Small Communities Water and Wastewater Grant Fund rules identified in this section. The available funds will be allocated approximately 50/50 between water and wastewater projects. The division will adjust the 50/50 allocation if necessary depending upon the quantity and composition of the application requests. No more than 10% of the total available funds will be distributed to any single water and/or wastewater eligible project. The division will notify all applicants of their funding status after the establishment of a fundable list.

The fundable list will be posted on the division website to identify the recipients of funds and the amount of each award.

### **(4) Project Prioritization**

- (a) Drinking Water
  - i) If the demand for funding in the Small Communities Water and Wastewater Grant

Fund exceeds the available funds, the division shall rank each project based on financial/affordability, drinking water quality and public health, Colorado Primary Drinking Water Regulation compliance, and readiness to proceed. The division will give priority to the applicants that have the lowest financial ability to pay based upon project ranking criteria. Specific point ranking criteria and associated points under each of the above factors will be included in the request for application. Projects will be funded in priority order from highest to lowest until all funds have been allocated.

- ii) Additional points will be awarded if the need for the project is a result of a natural disaster in a county where the Governor has declared a disaster emergency by Executive Order or proclamation under section 24-33.5-704, C.R.S.

(b) Wastewater

- i) If the demand for funding in the Small Communities Water and Wastewater Grant Fund exceeds the available funds, the division shall rank each project based on financial/affordability, water quality improvement, permit compliance, and readiness to proceed. The division will give priority to the applicants that have the lowest financial ability to pay based upon project ranking criteria. Specific point ranking criteria and associated points under each of the above factors will be included in the request for application. Projects will be funded in priority order from highest to lowest until all funds have been allocated.
- ii) Additional points will be awarded if the need for the project is a result of a natural disaster in a county where the Governor has declared a disaster emergency by Executive Order or proclamation under section 24-33.5-704, C.R.S.

**55.7-10 RESERVED**

**55.11 STATEMENT OF BASIS AND PURPOSE REGARDING THE DOMESTIC WASTEWATER TREATMENT GRANT PROGRAM (1998)**

In accordance with the requirements of 24-4-103(4), the Commission makes these findings and adopts this Statement of Basis and Purpose.

The subject regulations are in implementation of the requirements of the Colorado Water Quality Control Act, C.R.S., 25-8-101., et seq. Section 202 of the Act requires that the Commission administer construction grants for municipal waste treatment facilities for the State. In particular, C.R.S., 1973, 25-5-202(1)(e)(g) provide as follows: The Commission shall develop and maintain a comprehensive and effective program for prevention, control, and abatement of water pollution and for water quality protection throughout the entire state and, in connection therewith, shall:

- (e) Perform duties assigned to the Commission in part 7 of this article with respect to the location, design, construction, financing, and operation of domestic wastewater treatment plants
- (g) Promulgate regulations and adopt priority ranking for the administration of federal and other public source construction loans or grants which the Commission or the Division administers which loans or grants shall not be expended for any purpose other than that for which they were provided.

These regulations provide a format for determining which eligible projects should receive funds. The priority system is in five parts as follows:

5.5.1 Authority

5.5.2 Purpose

5.5.3 Priority System

5.5.4 Prioritization within Categories

5.5.5 Determination of Project Funding

5.5.6 Update of Categorization and Ranking List

**55.12 STATEMENT OF BASIS SPECIFIC STATUTORY AUTHORITY, AND PURPOSE REGARDING THE DOMESTIC WASTEWATER TREATMENT GRANT PROGRAM (1991 REVISIONS)**

The provisions of Sections 25-8-202(1)(e), and (g); 25-8-308(1)(d); and 37-95-107.6(4) C.R.S., provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with Sections 24-103(4) C.R.S., the following statement of basis and purpose.

**BASIS AND PURPOSE**

Many changes were incorporated into the priority system procedures (5.5.3) to allow additional projects that are eligible under this program to receive funding. The categories added were for potential health hazards, facilities that are beyond design life and in need of repair and sludge disposal. Categories for potential health hazards and facilities beyond design life and in need of repair were added to assist communities with pollution prevention to limit initiation of compliance and enforcement measures. The sludge disposal category was added to assist communities with meeting State/EPA sludge management regulations. The changes were also made to coincide with the Water Pollution Control Revolving Fund (WPCRF) 5.2.5 priority system procedures. The changes made will allow the Division to utilize one priority point system for all State priority lists. This system will accommodate the State grant program, the Sewer Needs List for the Division of Local Government, the WPCRF and any future federal grant program.

**55.13 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE REGARDING THE DOMESTIC WASTEWATER TREATMENT GRANT PROGRAM (1992 REVISIONS)**

The provisions of Sections 25-8-202(1)(e), and (g); 25-8-308(1)(d); and 37-95-107.6(4) C.R.S. provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with Sections 24-4-103(4) C.R.S., the following statement of basis and purpose.

**BASIS AND PURPOSE**

The FY93 State Sewage Construction Grant Priority List is presented to the Water Quality Control Commission for agency action and public comment. The regulations under 5.5.4 provide for projects to be listed in a priority basis for funding dependent upon appropriations from the State Legislature. Because of lottery sales, it is possible this program will receive \$2 million for funding in FY93-94.

**55.14 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE REGARDING THE DOMESTIC WASTEWATER TREATMENT GRANT PROGRAM (1993) REVISIONS)**

The provisions of Sections 25-8-202(1)(e), and (g); 25-8-308(1)(d); and 37-95-107.6(4) C.R.S. provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with Sections 24-4-103(4) C.R.S., the following statement of basis and purpose.

**BASIS AND PURPOSE**

The FY94 State Sewage Construction Grant Priority List is presented to the Water Quality Control Commission for agency action and public comment. The regulations under 5.5.4 provide for projects to be

listed in a priority basis for funding dependent upon appropriations from the State Legislature. The Division has received \$2 million for funding in FY93-94.

**55.15 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE REGARDING THE DOMESTIC WASTEWATER TREATMENT GRANT PROGRAM (1994) REVISIONS)**

The provisions of Sections 25-8-202(1)(e), and (g); 25-8-308(1)(d); and 37-95-107.6(4) C.R.S. provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with Sections 24-4-103(4) C.R.S., the following statement of basis and purpose.

**BASIS AND PURPOSE**

The FY95 State Sewage Construction Grant Priority List is presented to the Water Quality Control Commission for agency action and public comment. The regulations under 5.5.4 provide for projects to be listed in a priority basis for funding dependent upon appropriations from the State Legislature. The Division has received \$2 million for funding in FY94-95.

**55.16 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE REGARDING THE DOMESTIC WASTEWATER TREATMENT GRANT PROGRAM (1995) REVISIONS)**

The provisions of Sections 25-8-202(1)(e), and (g); 25-8-308(1)(d); and 25-8-703 C.R.S. provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with Sections 24-4-103(4) C.R.S., the following statement of basis and purpose.

**BASIS AND PURPOSE**

The FY96 State Sewage Construction Grant Priority List is presented to the Water Quality Control Commission for agency action and public comment. The regulations under 5.5.4 provide for projects to be listed in a priority basis for funding dependent upon appropriations from the State Legislature. The Division has received \$2 million for funding in FY95-96. The Division will be utilizing 5% (\$100,000) for Administration of the program.

**55.17 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE REGARDING THE DOMESTIC WASTEWATER TREATMENT GRANT PROGRAM: JULY, 1997 RULEMAKING**

The provisions of sections 25-8-202 and 25-8-401, 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 has adopted a revised numbering system for this regulation, as a part of an overall renumbering of all Water Quality Control Commission rules and regulations. The goals of the renumbering are: (1) to achieve a more logical organization and numbering of the regulations, with a system that provides flexibility for future modifications, and (2) to make the Commission's internal numbering system and that of the Colorado Code of Regulations (CCR) consistent. The CCR references for the regulations will also be revised as a result of this hearing.

**55.18 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE REGARDING THE DOMESTIC WASTEWATER TREATMENT GRANT PROGRAM: FEBRUARY, 1998 RULEMAKING**

The provisions of sections 25-8-202(1)(e) and (g); 25-8-308(1)(d); and 25-8-703, 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 FY98 State Sewage Construction Grant Priority List has been approved by the Water Quality Control Commission. Regulation # 53 provides for projects to be listed in a priority basis for funding dependent upon appropriations from the State Legislature.

The Division has received \$3 million for funding in FY96-97 and \$3 million for FY97-98. The Division will be utilizing up to 5% of each grant for administration of the program.

The Commission received comments from the Denver Regional Council of Governments Water Resource Management Advisory Committee. There appear to be three concerns by DRCOG, that are addressed as follows.

The Division has always in the past and will continue in the future (by means of the site approval process and Commission policy established in the Water Pollution Control Revolving Fund Rules) ensure that projects are identified in the appropriate water quality planning documents prior to the award of funds to construct the project. The Division has committed to aggressively involve DRCOG as well as other water quality management agencies with the WPCRF Intended Use Plan and the State Construction Grant List as they are developed.

The Clear Creek/Arapahoe MHP and the Clear Creek/Herman Area are two distinct projects.

The Box Elder Water and Sanitation District is a community of approximately 40 homes near the Tomahawk Truck Stop in Adams County; however, the address listed with Special Districts to send correspondence is in the City of Englewood. The Division is willing to include both the location of the District and the address where they send correspondence.

### **55.19 STATEMENT OF BASIS AND PURPOSE REGARDING THE DRINKING WATER GRANT FUND (1999)**

These rules establish a system to administer grant funds and to provide for a mechanism to prioritize eligible projects. The rules allow lower priority drinking water systems to receive funding ahead of systems with higher priority if the higher priority system does not apply for the funding or is not ready to proceed with its project.

The Drinking Water Grant Program will provide financial assistance to governmental agencies and not-for-profit public water systems serving populations of not more than 5,000 people for projects including consolidation, planning, design and/or construction of public water systems.

The Drinking Water Grant Program Plan, which includes eligible projects, will be developed by the WQCD and submitted to the Board of Health (Board) once each year. A public will be held by the Board to receive input on the Plan. Following the meeting, any changes will be incorporated and the final Plan shall be approved by the Board.

These rules are similar to those adopted by the Board for the Drinking Water Revolving Fund. The rules are also similar to those adopted by the Water Quality Control Commission (Commission) for the Water Pollution Control Revolving Fund and the Domestic Wastewater Treatment Grant Program. The rule adoption authority for wastewater rests with the Commission while the drinking water rules are adopted under the authority of the Board of Health.

### **55.20 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE REGARDING THE DOMESTIC WASTEWATER TREATMENT GRANT PROGRAM (1999) REVISIONS**

The provisions of Sections 25-8-202(1)(e), and (g); 25-8-308(1)(d); and 25-8-703 CRS. 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 FY99 State Sewage Construction Grant Priority List is presented to the Water Quality Control Commission for agency action and public comment. Regulations No. 53 provide for projects to be listed in a priority basis for funding dependent upon appropriations from the State Legislature.

The Division has received \$3 million for funding in FY97-98 and \$3 million for FY98-99. The Division will be utilizing up to 5% of each grant for administration of the program.

### **55.21 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE REGARDING THE DOMESTIC WASTEWATER TREATMENT GRANT PROGRAM (2000) REVISIONS**

The provisions of sections 25-8-202(1)(e) and (g); 25-8-308(1)(d); and 25-8-703 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 subject regulations are in implementation of the requirements of the Colorado Water Quality Control Act, C.R.S., 25-8-101. et seq. Section 25-8-202 of the Act requires that the Commission promulgate regulations for the administration of grants for domestic wastewater treatment facilities for the State. In particular, C.R.S., 25-8-202(1)(e) and (g) provide as follows: "The Commission shall develop and maintain a comprehensive and effective program for prevention, control, and abatement of water pollution and for water quality protection throughout the entire state and, in connection therewith, shall:

- (e) Perform duties assigned to the Commission in part 7 of this article with respect to the location, design, construction, financing, and operation of domestic wastewater treatment plants.
- (g) Promulgate regulations and adopt priority ranking for the administration of federal and other public source construction loans or grants which the Commission or the Division administers, which loans or grants shall not be expended for any purpose other than that for which they were provided.

A stakeholders group with members from the Southeast Council of Governments, Clear Creek Watershed Forum, a consulting engineering firm, the State Environmental Information Center, the Water Quality Control Division and the Division of Local Government of the Department of Local Affairs met to create new regulations to provide a format for determining which eligible projects should receive funds under the Domestic Wastewater Treatment (DWWT) Grant Program.

The need for revising Regulation No. 53 came about when the previous priority system that was used for both grants and loans under Regulation No. 51 (Water Pollution Control Revolving Fund (WPCRF) Rules) was deleted and replaced with a system that could fund water quality projects beyond wastewater treatment. Since Colorado's Water Quality Control Act only allows grants to small community domestic wastewater treatment projects, separate regulations had to be established to provide criteria for eligible grants. It is the Division's intent to continue to utilize the list of projects developed under the WPCRF Rules by extracting the projects that would meet the criteria for DWWT Grant Program established under this regulation.

Section 53.4(3) allows the Division to provide assistance to governmental agencies that were not identified in the Intended Use Plan and yet still need to move ahead with a project or make adjustments in



an emergency situation. The focus on providing funds for planning or a quick fix in an emergency and then ensuring that those projects are identified on a subsequent approved plan provides flexibility while preserving the credibility of the process.

The timing of the public rulemaking hearing for this regulation will not accommodate approval of the Intended Use Plan for the year 2000 by December 31, 1999. The 2000 Intended Use Plan will be developed as Regulation No. 54 for the Commission's approval in February 2000 after adoption of these regulations. Until this process is complete, the Division will continue to award grant contracts from the Commission's approved 1999 State Construction Grant Priority List.

The new system as proposed will provide categories of eligible projects, provide mechanism for funding throughout the year, identify the use of the grant funds and allow for prioritization as necessary. The proposed system is still similar to the WPCRF and can accommodate this DWWT Grant Program, the Sewer Needs List for the Division of Local Government, and any future federal grant program.

#### **55.22 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE REGARDING THE DOMESTIC WASTEWATER TREATMENT GRANT PROGRAM (2001) REVISIONS**

The provisions of sections 25-8-202(1)(e) and (g); 25-8-308(1)(d); and 25-8-703 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**

With the passage of HB 1246, the scope of the DWWT Grant Funding System has been expanded to enable the program to fund counties on behalf of unincorporated areas with populations of not more than 5,000. This change is incorporated into this Regulation #53 and involves expanding the definition of "governmental agency" to include "counties on behalf of unincorporated areas" and the definition of a "small community" to include unincorporated areas of not more than 5,000 population.

The body of the regulation does not need to be changed because it has always been broad enough to identify the needs in counties. The Domestic Wastewater Treatment Grant Program funds were not made available to counties on behalf of unincorporated areas until the statutory change was made and approved March 20, 2001. Paragraph (1)(b)(i) of 25-8-703 gives the Division authority to enter into contracts with counties on behalf of unincorporated areas and it will be repealed July 1, 2006.

#### **55.23 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE REGARDING THE DOMESTIC WASTEWATER TREATMENT GRANT PROGRAM (MAY 2004 RULEMAKING)**

Sections 25-8-202(1)(e) and (g); 25-8-308(1)(d); and 25-8-703, 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**

Recent statutory amendments led to changes to the regulations governing another of the Division's funding programs, the Water Pollution Control Revolving Fund Rules, Regulation No. 51. Since the Commission was planning to consider changes to Regulation No. 51, the Attorney General's Office also examined Regulation No. 53, focusing on streamlining certain provisions of the two regulations. The Attorney General's Office, along with the Division and a stakeholders group, also discussed options to simplify the process for the Commission's annual approval of the program's "Intended Use Plan."

In order to accomplish these objectives, the Commission made the following changes to Regulation No. 53:

Section 53.3 - Detailed definitions of a public health hazard and significant non-compliance were added to assist staff in determining under which category a project should be listed.

Section 53.4(1) - A change was made to indicate that the Domestic Wastewater Treatment Grant Program Intended Use Plan will be approved annually by the Commission in a public forum after a public notice and comment period, but not through a rulemaking process.

Section 53.4(2) - Category 1 and 2 were explained further to assist staff in categorizing projects on the Project Eligibility List.

## **55.24 STATEMENT OF BASIS AND PURPOSE REGARDING THE WATER QUALITY IMPROVEMENT FUND (MAY 2007)**

The provisions of Sections 25-8-202, 25-8-308, and 25-8-608, C.R.S. provide the specific statutory authority for adoption of the attached regulations. The Commission, in compliance with section 24-4-103(4), C.R.S., has adopted the following statement of basis and purpose.

### **BASIS AND PURPOSE**

The purpose of this new regulation is to implement the Fund as established by House Bill 06-1337. This regulation provides a format for identifying eligible grant recipients and projects, Fund allocation, and prioritization criteria that will be used to award grants from the Fund.

The General Assembly appropriated \$292,990 for the Fund for state fiscal year 2007. However, the statute did not take effect until the passage of the bill on May 26, 2006 and applies only to violations committed on or after this date. Only those penalties collected after May 26, 2006 and appropriated by the General Assembly will be available for grants.

The Fund will be administered by the Division, which also administers the Water Pollution Control Revolving Fund loans, State Domestic Wastewater Grants, and the Clean Water Act Section 319 nonpoint source grants. When compared to Water Pollution Control Revolving Fund loans, State Domestic Wastewater Grants, and the Section 319 nonpoint source grants, the initial amount of funding provided for the Fund is considerably less. No additional Division staff is included in the legislation to administer grants associated with this regulation. The goals of this regulation are similar to those for the Water Pollution Control Revolving Fund, State Domestic Wastewater Grant and the Section 319 nonpoint source grants. The grant amounts of the Fund are expected to be relatively small compared to the overall cost of such projects, and in most cases will not cover the entire cost of the project. Therefore, the Commission has determined that the most efficient and effective process to implement the Fund is to use, where established, the criteria already established by the three existing funding mechanisms.

An established process did not exist for projects identified under Category 1 (projects that improve the water quality in the community or water body which has been impacted by a water quality violation that resulted in a penalty being imposed). The Commission determined that a separate application process, with the criteria of project eligibility, Fund allocation, and project prioritization criteria being specifically developed, should be established to provide funding. This process will be compatible with existing Division loan and grant funding opportunities.

The Commission determined that entity eligibility for receipt of funding should be consistent with existing loan and grant opportunity processes and criteria. Ineligible entities are specifically identified to eliminate the potential for a party issued an enforcement action to apply for and receive grant funding. Project eligibility was determined to be consistent with the requirements specified in HB-06-1337. Funding allocation was determined by considering the legislative intent of the bill, which resulted in giving a slightly higher proportion to improving water quality in the community or water body that has been impacted by a water quality violation, to address effects from discharge violations. Categories 2 and 3 are given an equal funding allocation so that projects in these categories would receive funding over time. Project

prioritization is established within each category because of the unique aspects of the project types. Category 1 and 2 priorities are to first address public health impacts to communities or impacted water bodies, and environmental impacts second. Category 3 priorities are to address more historic water quality impairments first, and protection of existing water quality designated uses and standards second.

This regulation will be implemented beginning in the fiscal year for which funds are appropriated and available. The Commission determined that implementation of this new Fund should be in conjunction with existing loan and grant opportunities currently administered by the Division, so as to minimize additional solicitation activities and associated staff workload.

**55.25 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE REGARDING THE DOMESTIC WASTEWATER TREATMENT GRANT PROGRAM (JULY 2008 RULEMAKING, EFFECTIVE DATE JANUARY 1, 2009)**

The provisions of sections 25-8-202(1)(e) and (g); 25-8-308(1)(d); and 25-8-703 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**

Changes to the Rules have been made to streamline the Intended Use Plan process. The categorization and prioritization system that are included in the Water Pollution Control Revolving Loan Fund Rules have been incorporated into the Domestic Wastewater Treatment Grant Rules. These revisions will enable the Division to develop one Intended Use Plan and Project Eligibility List, that will be used for both the grant and loan funds.

**55.26 STATEMENT OF BASIS AND PURPOSE REGARDING THE DRINKING WATER GRANT FUND (JULY 14, 2008 RULEMAKING, EFFECTIVE DATE JANUARY 1, 2009)**

Sections 25-1.5-208 and 25-1.5-208(1)(b) 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**

Changes to Section 25-1.5-208 C.R.S. moved the authority for promulgating rules and approving the annual intended use plan from the Colorado Board of Health to the Water Quality Control Commission (Commission). Updates to these rules reflect this change in authority.

Changes to the Rules have also been made that streamline the Intended Use Plan process. The categorization and prioritization system that is included in the Drinking Water Revolving Loan Fund Rules have been incorporated into the Drinking Water Grant Program Rules. These revisions will enable the Division to develop one Intended Use Plan and Project Eligibility List, that will be used for both the grant and loan funds.

**55.27 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE REGARDING THE WATER QUALITY IMPROVEMENT FUND, FEBRUARY 13, 2012 RULEMAKING, EFFECTIVE MARCH 30, 2012**

The provisions of Sections 25-8-202, 25-8-308, and 25-8-608, C.R.S. provide the specific statutory authority for adoption of the attached regulations. The Commission, in compliance with section 24-4-103(4), C.R.S., has adopted the following statement of basis and purpose.

**BASIS AND PURPOSE**

House Bill 11-1026 amended the Water Quality Control Act to authorize grants for stormwater management training and best practices training to prevent or reduce the pollution of state waters.

Section 55.3 (Entity Eligibility) was amended for consistency with HB 11-1026 to include not-for-profit stormwater administrators and training providers as types of entities eligible to receive funding.

Section 55.4 (Project Eligibility) was amended per HB 11-1026 to add stormwater management training and best management practices training as Category 1 type projects. The existing categories were renumbered to account for this addition.

Section 55.5 (Funding Allocation) was amended to provide for up to \$50,000 of available water quality improvement funds to Category 1 projects. The Commission determined that it was appropriate to allocate this amount as the maximum allowed under HB 11-1026.

The Commission determined it was appropriate to reduce the funding for Category 2 (formerly Category 1) projects from 40% to 10%. This category includes projects for the improvement of water quality impacts which are the result of a water quality violation that resulted in a penalty. While the Commission believes it is appropriate to maintain some level of funding for such projects, the number of applicants that have historically applied for funding under this category has been limited. In order to inform potential applicants of their eligibility to receive funding under Category 2, the Division will post a list of violators who paid penalties into the Water Quality Improvement Fund. The list will also include the county where the violation occurred. If the applicant can demonstrate its project will improve the water quality in the community or water body which has been impacted by the violation, such applicant may be eligible to receive funding.

The Commission also increased the funding allocation for Category 3 (formerly Category 2) projects from 30% to 60% because this category, which relates to planning, design, construction and repair of stormwater projects and domestic wastewater treatment works, represents the majority of funding requests received by the Division. The Commission found the increase for Category 3 to be necessary to address the high level of demand and the \$2.9 billion of infrastructure needs that are documented in the 2012 Water Pollution Control Revolving Fund Intended Use Plan. The allocation for Category 4 (formerly Category 3), nonfederal match funding for nonpoint source projects, will remain at 30% of available funds.

In addition, language was added to section 55.5 to clarify that if any funds were not utilized in one category they will be redistributed among the remaining categories.

Section 55.6 (Project Prioritization Criteria), outlining the prioritization of grant requests within each category, was revised to include the new Category 1. The Commission found it appropriate to give priority to projects that implement stormwater management and best management practices training not previously available (or previously limited in accessibility) in Colorado, above those projects that will simply expand the context or availability of existing stormwater management and best management practices training. Language was also added to section 55.6 to explain that if insufficient requests for funding are received and determined eligible, the Division has the ability to reallocate funding among categories based on demand. Historically, when the Division did not receive sufficient eligible applications within a certain category, the funds allocated to that category were not expended. This provision ensures that all funds appropriated each year can be utilized.

Section 55.7 (Notification and Reporting) was amended to require grant recipients to provide a final project report instead of an annual report. Based upon Division feedback, the Commission determined this to be a more efficient approach to reporting.

#### PARTIES TO THE RULEMAKING

1. Urban Drainage and Flood Control District
2. Colorado Department of Transportation

**55.28 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE REGARDING THE WATER QUALITY IMPROVEMENT FUND, JUNE 11, 2012 RULEMAKING, EFFECTIVE JULY 30, 2012**

The provisions of Sections 25-8-202, 25-8-308, and 25-8-608, C.R.S. provide the specific statutory authority for adoption of the attached regulations. The Commission, in compliance with section 24-4-103(4), C.R.S., has adopted the following statement of basis and purpose.

**BASIS AND PURPOSE**

During the 2012 legislative session the General Assembly authorized additional funding for the Water Quality Improvement Fund through the annual appropriation of the Long Bill. In 2012, \$600,000 for capital construction funding has been authorized with the flexibility to expend the funds over a three year period. The Commission took action to modify Regulation #55 by changing the funding allocation, project prioritization criteria, and notification provisions. Historically, \$167,000 was appropriated annually for the Water Quality Improvement Fund with a requirement that the funds be expended within the fiscal year.

There has been more demand for Water Quality Improvement Fund grants due to the increase in available funds, the requirement to provide stormwater training grants, and the flexibility to expend the funds over multiple years. In order to properly notify the Requests for Applications, allocate, and award funds the Commission adopted the following modifications to Regulation #55:

Section 55.2 - Definitions were modified for the non-point source and stormwater projects to better clarify the intent of the statute and to specify the types of projects eligible for funding from the Water Quality Improvement Fund.

Section 55.5 – Funding Allocation was modified to provide additional funding for each of the four categories of projects under the statute. Specifically, additional funding has been provided for the first year of implementation of the stormwater management training category. Limits have been established within specific categories to ensure funding is equitably distributed among eligible applicants.

Section 55.6 - Project Prioritization Criteria were modified to include additional criteria. The additional criteria will be used to further prioritize projects within categories when there is insufficient funding. Specific criteria and associated points will be included as an attachment to the Request for Applications notice. The criteria will include population served/benefited by the project, financial/affordability (with an emphasis on providing funding opportunities for smaller, less financially capable communities), water quality benefits, permit compliance, readiness to proceed and availability of local project match. For Category 1 projects, a specific project may meet Priority 1 criteria over multiple years during the period that the training is being developed and established. For consistency, the Category 3 description was modified to reflect the project eligibility description identified in 55.4. Reference to the non-existent State Domestic Wastewater Treatment Grant was deleted.

Section 55.7 – Notification and Reporting section was modified to eliminate the application deadline and allow the Division the flexibility to notice Requests for Applications depending upon availability of appropriation of funds by the legislature.

**PARTIES TO THE RULEMAKING**

1. Urban Drainage and Flood Control District

**55.29 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE REGARDING THE WATER QUALITY IMPROVEMENT FUND, MAY 13, 2013 RULEMAKING, EFFECTIVE JUNE 30, 2013**

The provisions of Sections 25-8-202, 25-8-308, and 25-8-608, C.R.S. provide the specific statutory

authority for adoption of the attached regulations. The Commission, in compliance with section 24-4-103(4), C.R.S., has adopted the following statement of basis and purpose.

### **BASIS AND PURPOSE**

During the 2013 legislative session the General Assembly created a new program under HB-13-1191 entitled the Nutrient Grant Fund. HB-13-1191 requires the Commission to promulgate rules necessary to administer the program as an amendment to Regulation #55, the Water Quality Improvement Fund. In order to assist parties submitting a Request for Applications, and in order to provide a transparent process for allocation and award of the funds the Commission created section 55.8, Nutrients Management Grant Fund. This section established four subsections for administering the program; Entity Eligibility, Project Eligibility, Project Prioritization, and Funding Allocation and Awarding Process.

Entities eligible for funding under this section are those Domestic Wastewater Treatment Works owned and operated by local governments and subject to the first phase implementation of Regulation #85. Funds can be used for projects to plan, design, construct, or improve a wastewater treatment works in order to comply with the effluent limits of Regulation #85.

The Project Prioritization criteria that were developed for the Nutrient Management Grants were designed to reflect language contained in HB-13-1191 which emphasized priority to be given to eligible applicants who would be the most financially burdened by the costs associated with incorporating the necessary improvements or adaptations to their domestic wastewater treatment facilities necessary to achieve compliance with Regulation #85. The priority system is comprised of five sections (affordability, water quality, operational costs/environmental impact, managerial capability, and readiness to proceed) with the majority of total points available to capture financial need of eligible applicants. Some sections have multiple criteria for scoring. The priority system evaluates the environmental impacts associated with nutrient loads to surface waters, the anticipated operational costs associated with implementing nutrient management controls, and the ability of eligible applicants to properly operate, maintain, and ensure the longevity and integrity of infrastructure investments. The priority system also provides points for eligible applicants who work cooperatively with community partners in efforts to address nutrient management on a watershed basis by incorporating non-point source monitoring and best management practices both upstream and downstream of the domestic wastewater treatment facility.

The Commission felt that a local match commitment of twenty percent (20%) for Planning grants was important to show applicant commitment and so will award 5 points for those meeting the twenty percent match with cash funds. Applicants with Planning projects who elect to contribute an amount greater than twenty percent of the grant award will receive additional points for their demonstration of local commitment. The Commission also determined that applicants with Design/Construction projects would ultimately contribute an amount greater than twenty percent of the grant award due to the level of cost associated with design and construction, therefore nullifying the need to apply a local match requirement for Design/Construction projects.

The development of Readiness to Proceed criteria for both Design/Construction and for Planning projects is an important criteria that will assist in ensuring that all funds will be allocated and expended within a three-year timeframe pursuant to HB-13-1191. The amount made available for Design/Construction projects and for Planning projects will be determined and identified at the time the Request for Applications has been noticed. In order to properly address the variability in demand for funding of Design/Construction and/or Planning, the Commission has provided the ability to transfer funds between Design/Construction and Planning projects to satisfactorily accommodate the demand indicated by the number and type of project applications. The Commission has also determined that it may be necessary to increase the amount of individual Nutrient Management Grant awards to ensure that all funds have been allocated to eligible entities.

**55.30 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE REGARDING THE WATER QUALITY IMPROVEMENT FUND, MAY 12, 2014 RULEMAKING, EFFECTIVE JUNE 30, 2014**

The provisions of Sections 25-8-202, 25-8-308, and 25-8-608, C.R.S. provide the specific statutory authority for adoption of the attached regulations. The commission, in compliance with section 24-4-103(4), C.R.S., has adopted the following statement of basis and purpose.

### **BASIS AND PURPOSE**

During the 2014 legislative session the General Assembly created a new program under HB14-1002 entitled the Natural Disaster Grant Fund. HB14-1002 requires the commission to promulgate rules necessary to administer the program. The commission determined that Regulation No. 55, the Water Quality Improvement Fund, was the most appropriate regulation to amend. In order to assist parties submitting a request for applications, and in order to provide a transparent process for allocation and award of the funds, the commission created section 55.9, Natural Disaster Grant Fund. This section established four subsections for administering the program: entity eligibility, project eligibility, award process and funding allocation and project prioritization. Entities eligible for funding under this section include local governments, including local governments accepting grants on behalf of and in coordination with not-for-profit water systems, for the planning, design, construction, improvement, renovation or reconstruction of domestic wastewater treatment works or public drinking water systems that have been impacted, damaged or destroyed in connection with a natural disaster. Further, local governments assisting with the repair and restoration of on-site wastewater treatment systems as defined in section 25-10-103(12), are eligible for funding.

In alignment with HB14-1002, the commission has determined that only the above eligible local governments located in a county for which the governor has declared a disaster emergency by executive order or proclamation under section 24-33.5-704, C.R.S. are eligible to receive funds under the Natural Disaster Grant Fund.

In order to address on-site wastewater treatment systems that have been impacted by the September 2013 flood, the commission determined that a portion of the State Fiscal Year14-15 appropriation would be set-aside to assist local governments as determined by a stakeholder process.

In order to maximize other funding sources, the commission felt it was important to allow these grant moneys to be used as matching funds required to secure any other state and federal funding for the planning, design, construction, improvement, renovation or reconstruction of drinking water and wastewater infrastructure.

The project prioritization criteria that were developed for the Natural Disaster Grant Fund were designed to reflect language contained in HB14-1002 which emphasized priority to be given to eligible applicants who would be the most financially burdened by the costs associated with incorporating the necessary improvements or adaptations to their domestic wastewater treatment works or public drinking water systems. The commission also felt it was important to further prioritize projects based on population criteria, financial affordability factors, regionalization, utilization of multiple funding sources, readiness to proceed and impacts from the September 2013 flood necessary for planning, design, construction, improvements, renovation or reconstruction, and other factors pertinent to HB14-1002.

To properly address the variability in demand between the domestic wastewater treatment works, public drinking water systems and on-site wastewater systems the commission provides the ability to transfer funds between the Natural Disaster Grant Fund and a set-aside for on-site wastewater treatment systems. The commission has also determined that it may be necessary to increase the amount of grant awards in priority order, highest to lowest, until all of the funds have been allocated or the application demand has been met subsequent to any transfer between the main fund and the on-site wastewater treatment system set-aside.

**55.31 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE REGARDING STATE FUNDED WATER AND WASTEWATER INFRASTRUCTURE PROGRAMS, AUGUST 11, 2014 RULEMAKING, EFFECTIVE SEPTEMBER 30, 2014**

The provisions of sections 25-1.5-208, 25-8-202(1)(g), 25-8-608(1.7), 25-8-608.5, and 25-8-608.7, C.R.S., provide the specific statutory authority for adoption of the attached regulation. The Water Quality Control Commission has adopted the following statement of basis and purpose in compliance with section 24-4-103(4), C.R.S.

### **BASIS AND PURPOSE**

Due to an increase in funding programs provided by the Colorado General Assembly, the commission felt it was important to consolidate all state funded programs into one regulation. Therefore, the commission renamed Regulation #55 from the Water Quality Improvement Fund to State Funded Water and Wastewater Infrastructure Programs, which now encompasses the Water Quality Improvement Fund, the Nutrient Management Grant Fund, the Natural Disaster Grant Fund, and the Small Communities Water and Wastewater Grant Fund.

Specific changes to Regulation #55 include the following:

- The authority, scope, and purpose was combined for all state funded grant funds in section 55.1
- Section 55.2 is now reserved for definitions applicable to all state funded programs listed in the regulation, which now includes new definitions for the terms “pollution,” “beneficial use,” “consolidation,” and “waterborne disease outbreak” and various edits to existing definitions
- Previous Water Quality Improvement Fund sections have been renamed to include other state funded grant funds
- Section 55.6 Small Communities Water and Wastewater Grant Fund was added as a result of Senate Bill 14-025
- Each state funded program title was changed to include the word “criteria” and is listed in its own section:
  - 55.3 Water Quality Improvement Fund Criteria
  - 55.4 Nutrient Management Grant Fund Criteria
  - 55.5 Natural Disaster Grant Fund Criteria
  - 55.6 Small Communities Water and Wastewater Grant Fund Criteria
- Various editorial corrections have been made to align with other regulations or to provide clarity

### **New Provisions for Administration of the Small Communities Water and Wastewater Grant Fund**

The Water Quality Control Commission's Regulations #53 and #54 provided the rules for the Water Quality Control Division to administer two separate small community grant programs under two statutes: grants for drinking water in section 25-1.5-208 C.R.S., and grants for wastewater in section 25-8-703 C.R.S. In 2009, Senate Bill 09-165 amended section 25-1.5-208, C.R.S. by providing a continuous source of revenue from the severance tax trust fund. The legislation directed an annual transfer of up to \$10 million to the drinking water grant program after revenues from the fund exceeded \$201.5 million. However, this bill only amended the drinking water statute and did not provide the same continuous source of revenue for wastewater, which made it unclear that funds could be used for both drinking water and wastewater. As a result, SB 14-025 was introduced and signed into law on February 27, 2014 to clarify that drinking water and wastewater projects are eligible under the small community grant program.

Since SB 14-025 combined both water and wastewater small community grant programs, the commission



determined it was important to be consistent with legislation and have one regulation for program administration. The commission therefore repealed Regulation #53 for the Domestic Wastewater Treatment Grant Funding System and Regulation #54 for the Drinking Water Grant Fund as part of this rule adoption. In addition, the Commission incorporated all statements of basis and purpose from Regulations #53 and #54 into Regulation #55.

In order to administer the newly-combined Small Communities Water and Wastewater Grant Fund, the commission added sections 55.1(4) and 55.6 to Regulation #55. The following information lists the commission's actions for the Small Community Grant Fund:

- In alignment with SB14-025, the commission added section 55.1(4) and has determined that governmental agencies, including counties, and not-for-profit public water systems, as defined in section 25-1.5-201 (1) C.R.S., which serve a population of not more than five thousand people are eligible to apply for funds for the planning, design, and construction of public water systems.
- In order to assist parties submitting applications, and in order to provide an equitable and transparent process for allocation and award of funds, the commission created section 55.6, Small Communities Water and Wastewater Grant Program Criteria. This section established four subsections for administering the program: entity eligibility, project eligibility, award process and funding allocation, and project prioritization for both drinking water and wastewater projects.
- The project prioritization criteria that were developed for the Small Communities Water and Wastewater Grant Fund were designed to reflect language contained in SB 14-025 which emphasized priority to be given to eligible applicants who have the greatest financial need. The commission felt it was important to further prioritize projects based on population criteria, water quality and public health protection, compliance, and readiness to proceed.

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**Department of Law**  
**Office of the Attorney General**

Tracking number: 2014-00571

**Opinion of the Attorney General rendered in connection with the rules adopted by the**  
**Water Quality Control Commission (1002 Series)**

**on 08/11/2014**

**5 CCR 1002-55**

**REGULATION NO. 55 - WATER QUALITY IMPROVEMENT FUND**

The above-referenced rules were submitted to this office on 08/12/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

August 20, 2014 16:12:39

**John W. Suthers**  
Attorney General  
by Daniel D. Domenico  
Solicitor General

## **Permanent Rules Adopted**

### **Department**

Department of Public Health and Environment

### **Agency**

Hazardous Materials and Waste Management Division

### **CCR number**

6 CCR 1007-2 Part 1

### **Rule title**

6 CCR 1007-2 Part 1 SOLID WASTE DISPOSAL SITES AND FACILITIES 1 - eff  
09/30/2014

### **Effective date**

09/30/2014

# 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

Deletion and Replacement of Existing Section 5.5 Regulations (Management of Asbestos-Contaminated Soil) with New Section 5.5 Regulations (Management of Regulated Asbestos Contaminated Soil (RACS)); the Addition of Appendix 5A (Sample Collection Protocols and Analytical Methodologies) and the Associated Additions and Revision to Section 1.2 Definitions

(Adopted by the Solid and Hazardous Waste Commission on August 19, 2014)

**1) Amend Section 1.2 by adding the following definitions in alphabetical order to read as follows:**

#### **1.2 Definitions**

\*\*\*\*\*

**“Adjacent Receptor Zone”** means an area of uncontrolled access at a distance of 150' or less from the nearest Regulated Work Area (RWA) boundary during active Regulated Asbestos Contaminated Soil (RACS) disturbance. For the purpose of this definition, highways, streets, and roads without sidewalks, where only vehicles are permitted, are considered to be areas of controlled access and therefore not adjacent receptor zones. For the purpose of this definition "vehicle" means a device that is capable of moving itself, or of being moved, from place to place upon wheels, including bicycles and electrical assisted bicycles. For the purpose of this definition, an area for which access is not ordinarily controlled that is closed to the public during soil disturbing activities in the adjacent RWA is considered to be an area of controlled access and therefore not an adjacent receptor zone.

\*\*\*\*\*

**“Air Monitoring Specialist” (“AMS”)** means a person trained and certified, in accordance with the requirements of Air Quality Control Commission Regulation No. 8 (5 CCR 1001-10, Part B), for the collection of air samples to determine airborne particulate and/or asbestos concentrations.

\*\*\*\*\*

**“Ancillary Worker”** means a worker that has not completed the training under Section 5.5.3(A) and (B) of these regulations.

\*\*\*\*\*

**“Area of Contamination” (“AOC”)** means a discrete, discernible area of known RACS.

\*\*\*\*\*

**“Certified Asbestos Building Inspector” (“CABI”)** means a person trained and certified in accordance with Air Quality Control Commission Regulation No. 8 (5 CCR 1001-10, Part B), for the identification of asbestos-containing materials and the collection of samples to determine asbestos content, including qualified Department personnel.

\*\*\*\*\*

**“Debris”** means any discarded material that contains or consists of any of the following: construction, renovation and demolition debris (regardless of how it was generated), building or facility components, components of building systems (HVAC, plumbing, electrical, control, fire protection, roofing), components of pavement or drainage systems, industrial or machinery components, and/or mechanical components from motorized vehicles.

\*\*\*\*\*

**“Friable asbestos-containing material” (“Friable ACM”)** means any material that contains asbestos and when dry can be crumbled, pulverized, or reduced to powder by hand pressure and that contains more than one percent asbestos by weight, area, or volume. The term includes non-friable forms of asbestos after such previously non-friable material becomes damaged to the extent that when dry it can be crumbled, pulverized, or reduced to powder by hand pressure as determined in the field by a CABI.

\*\*\*\*\*

**“Geofabric”** for the purposes of Section 5.5 means a permeable fabric or synthetic material used for both visual and physical separation.

\*\*\*\*\*

**“Low Emissions Methods”** means soil disturbing activities that will not result in visible emissions without the use of wet methods.

\*\*\*\*\*

**“Non-Regulated Asbestos Contaminated Soil” (“Non-RACS”)** means soil or debris that contains only:

- 1) Intact non-damaged, non-friable asbestos-containing materials (ACM); or,
- 2) Damaged non-friable ACM(s) that do not have a high probability to release fibers based on the forces expected to act upon the material during disturbance as determined in the field by a CABI(s) through a “RACS Determination”. The following ACM(s) are predetermined to be Non-RACS:
  - a. Resin based materials including but not limited to phenolic-plastic (Bakelite), used in electrical and mechanical parts
  - b. Resilient flooring (vinyl, asphalt, rubber) excluding non-tar impregnated friable felt backing on sheet vinyl flooring (linoleum)
  - c. Tar impregnated or asphaltic materials in good condition that have not become brittle
  - d. Elastic, pliable, or rubberized materials, including but not limited to:
    - i. Pliable duct sealant
    - ii. Pliable fiberglass insulation sealant
    - iii. Pliable fire-stop caulking /sealants
    - iv. Pliable window and door caulking
  - e. Extremely hard materials, coatings and sealants including but not limited to:
    - i. Laboratory countertops and sinks
    - ii. Epoxy type Concrete Masonry Unit (CMU) coatings
    - iii. Epoxy type panel adhesive
    - iv. Duct sealant
    - v. Ceiling tile adhesive
  - f. Other ACM(s) as approved by the Department at the request of the owner or person disturbing debris, to not have a high probability to release fibers.

\*\*\*\*\*

**"Project"** means any soil disturbing activity that involves Regulated Asbestos Contaminated Soil (RACS) within a planned geographic area(s) of disturbance, as defined in the Notification of RACS Disturbance form submitted for that specific management or remediation scope, starting from the time of first RACS disturbance and continuing through final RACS removal or stabilization and final demobilization. A project may include one or more Regulated Work Areas (RWAs), and start dates and stabilization dates for individual RWAs within a project may be different.

\*\*\*\*\*

**“Project Specific RACS Management Plan” (“PSRMP”)** means a Regulated Asbestos Contaminated Soil (RACS) management plan for a single project submitted in accordance with Section 5.5.5(A).

\*\*\*\*\*

**“Qualified Project Monitor” (“QPM”)** means an individual who has the training and/or experience necessary to identify materials suspected of containing asbestos and who has the authority to make prompt decisions relating to the management of such materials, and who meets the training requirements in Section 5.5.3.

\*\*\*\*\*

**“Regulated Asbestos Contaminated Soil” (“RACS”)** means soil, ash or debris (plus six (6) inches in all directions of surrounding soil or other matrix material) containing:

- 1) Friable asbestos-containing materials (ACM) as determined in the field by a Certified Asbestos Building Inspector (CABI) through a RACS determination;
- 2) Previously non-friable ACM(s) that have been rendered friable as determined in the field by a CABI(s) through a RACS determination;
- 3) Non-friable ACM(s) that have a high probability of releasing fibers based on the forces expected to act upon the material during soil disturbance as determined in the field by a CABI(s) through a RACS determination;
- 4) Deteriorated non-friable ACM(s) that are in poor condition resulting in a high probability to release fibers due to weathering, historical mechanical impact, fire damage (by evidence of ACM within an ash layer) or other factors as determined in the field by a CABI(s) through a RACS determination;
- 5) The following broken, resized, or damaged ACM(s) are RACS:
  - a. Asbestos cement materials
  - b. Plaster
  - c. Brittle caulking, glazing and sealants
  - d. Powdery Concrete Masonry Unit (CMU) sealant
  - e. Powdery floor leveling compound
  - f. Drywall/wallboard and associated joint compound material
  - g. Firebrick
  - h. Other material as determined by the Department, at the request of the owner or person disturbing debris, to have a high probability to release fibers.

- 6) Soil or ash known to contain non-visible asbestos based on documented evidence.

\*\*\*\*\*

**“RACS Determination”** for the purpose of Section 5.5 means a determination, conducted in the field by a Certified Asbestos Building Inspector (CABI), of the friability of Asbestos Containing Material (ACM) and the probability of non-friable ACM to release fibers based on the condition of the material and the forces that are expected to act on it during disturbance. Determinations of friability shall be based on the requirements for such determinations set forth in Air Quality Control Commission Regulation No. 8 (5 CCR 1001-10, Part B). Determinations of the probability for non-friable ACM to release fibers during disturbance shall be based on the following:

- 1) The condition of the material prior to disturbance, based on observations of weathering, the integrity of the material, historical mechanical impact, or fire damage;
- 2) The potential for the material to be broken, resized or damaged during planned disturbance;
- 3) The material shall be considered RACS if the planned disturbance includes any of the following:
  - a. Augers
  - b. Rotary style trenchers
  - c. Driving on ACM lying on the surface (vehicles or equipment)
  - d. Blasting or other detonation
  - e. Intentional burning
  - f. Other types of direct mechanical impact which are:
    - i. In direct contact with ACM or result in observation of ACM after disturbance, and
    - ii. Causing damage to the ACM

\*\*\*\*\*

**“Regulated work area” (“RWA”)** as used in Section 5.5 of these regulations means the portion(s) of a site at which soil disturbing activities involving RACS occur.

\*\*\*\*\*

**“Risk-Based Air Threshold”** for the purpose of Section 5.5 means one of the following thresholds based on project duration and receptor population, or as approved by the Department, as determined based on the sampling, analytical, and data evaluation procedures provided in Appendix 5A:



- a. an average of 0.003 fibers per cubic centimeter (f/cc) for projects with durations of thirty (30) working days or less with child receptors;
- b. an average of 0.0003 f/cc for projects with durations between thirty (30) working days and one calendar year with child receptors;
- c. an average of 0.006 f/cc for projects with durations of thirty (30) working days or less with only adult receptors, including commercial workers and non-OSHA workers;
- d. an average of 0.0006 f/cc for projects with durations between thirty (30) working days and one calendar year with only adult receptors excluding commercial workers and non-OSHA workers;
- e. an average of 0.0009 f/cc for projects with durations of between thirty (30) working days and one calendar year with only commercial worker receptors;
- f. an average of 0.001 f/cc for projects with durations between 30 days and one year with only non-OSHA worker receptors;
- g. if the total duration of the project exceeds, or is anticipated to exceed, one year, the owner/operator shall contact the Department for a project specific risk-based threshold.

\*\*\*\*\*

**“Staging”** for the purposes of Section 5.5, means the accumulation of RACS in the RWA for twelve (12) hours or less.

**“Standard Operating Procedure” (“SOP”)** means a RACS management plan for multiple projects submitted in accordance with Section 5.5.5(B).

**“Stockpiling”** for the purposes of Section 5.5, means the accumulation of RACS that will exist for more than twelve (12) hours, up to and including ten (10) calendar days.

**“Storage”** for the purposes of Section 5.5, means the accumulation of RACS greater than ten (10) days, but not exceeding six (6) months unless a longer timeframe is approved by the Department and complies with local governing authority requirements.

\*\*\*\*\*

**“Visible”** means capable of being seen with the unaided eye.

**“Visual Inspection”** for the purposes of Section 5.5 means observation with sufficient proximity to identify discrete visible materials, while maintaining the safety of the inspector.

\*\*\*\*\*

## **2) Amend Section 1.2 by revising the following definitions to read as follows:**

### **1.2 Definitions**

\*\*\*\*\*

**“Adequately wet”** means sufficiently wet to minimize visible emissions of dust and/or debris within the regulated work area (RWA) and either:

- a. Prevent the release of visible emissions from leaving the RWA in accordance with Section 5.5 of these regulations; or
- b. Demonstrate that asbestos fibers are not leaving the RWA above risk-based air thresholds.

The observance of visible emissions, outside of the RWA, of dust and/or debris may be an indication that soils are not adequately wet.

\*\*\*\*\*

**“Asbestos”** means the asbestiform varieties of serpentinite (chrysotile), riebeckite (crocidolite), amosite (cummingtonite-grunerite), anthophyllite, actinolite and tremolite.

**“Asbestos-containing material” (“ACM”)** means any material that contains more than one percent (1%) asbestos.

\*\*\*\*\*

**“Friable asbestos waste”** means any asbestos waste that has been or can be pulverized or reduced to powder by hand pressure when dry.

\*\*\*\*\*

**“Mechanical”** means operated or produced by mechanism, tool or machine.

\*\*\*\*\*

**“Soil-disturbing activities”** means digging, excavating, staging, loading, stockpiling, backfilling, compacting, grading, tilling, drilling, intrusive sampling, and equipment or vehicle movement or any other mechanical activity, that when used, disturbs the surface and/or subsurface soil. For the purposes of Section 5.5 disturbance or removal of

debris and/or RACS is considered a soil disturbing activity. For the purposes of Section 5.5 hand disturbance or removal of RACS is subject to this regulation, but is not considered to be a mechanical disturbance.

\*\*\*\*\*

**“Visible emissions”** means any airborne or liquid emissions, coming from, or having come into contact with RACS, which are visually detectable without the aid of instruments. Proper disposal of appropriately filtered decontamination water does not constitute a visible emission.

\*\*\*\*\*

**3) Amend Section 1.2 by deleting the definition of “Asbestos-contaminated soil” as follows:**

## **1.2 Definitions**

\*\*\*\*\*

~~**“Asbestos-contaminated soil”** means soil containing any amount of asbestos.~~

**4) Add a Table of Contents for Section 5 (Asbestos Waste Management) to read as follows:**

## **SECTION 5**

### **ASBESTOS WASTE MANAGEMENT**

- 5.1 General Provisions
- 5.2 Non-Friable Asbestos Waste Disposal Areas
- 5.3 Friable Asbestos Waste Disposal Areas
- 5.4 Storage of Asbestos Waste
- 5.5 Management of Regulated Asbestos-Contaminated Soil (RACS)
  - 5.5.1 Scope and Applicability
  - 5.5.2 Exemptions
  - 5.5.3 Training
  - 5.5.4 Response to Unplanned RACS Discovery
    - (A) Immediate Actions

- (B) 24-Hour Notification Requirements
  - (C) Interim Actions
- 5.5.5 Response to Planned RACS Management
  - (A) Project Specific RACS Management Plan (PSRMP)
  - (B) Standard Operating Procedures (SOPs)
  - (C) Standard Requirements of Section 5.5.7
  - (D) Risk Based Approach
- 5.5.6 Remediation of Asbestos in Soil
- 5.5.7 Standard Requirements for the Disturbance of RACS
  - (A) Establishment and Control of a Regulated Work Area (RWA)
  - (B) Personal Protective Equipment (PPE) for the Purposes of Preventing Cross-Contamination
  - (C) Wetting
  - (D) Wind Speed Monitoring
  - (E) Air Monitoring
  - (F) Work Practices to be Followed During RACS Disturbance
  - (G) Loading and Placement of RACS
  - (H) Onsite Staging, Stockpiling, and Storage of RACS
  - (I) Decontamination
  - (J) RACS Spill Response
  - (K) Requirements for Exposed RACS Remaining in Place
  - (L) Documentation
- 5.5.8 Packaging and Disposition of Regulated Asbestos-Contaminated Soil (RACS)
  - (A) Disposal of RACS
  - (B) Onsite Reuse of RACS
  - (C) Demonstration of Non-RACS
- 5.5.9 Fees

Appendix 5A: Sample Collection Protocols and Analytical Methodologies

**5) Delete the existing Section 5.5 Regulations (Management of Asbestos-Contaminated Soil) in their entirety and replace with a new Section 5.5 Regulations (Management of Regulated Asbestos-Contaminated Soil (RACS)) to read as follows:**

## **SECTION 5**

### **ASBESTOS WASTE MANAGEMENT**

\*\*\*\*\*

#### **5.5 MANAGEMENT OF REGULATED ASBESTOS-CONTAMINATED SOIL (RACS):**

### 5.5.1 SCOPE AND APPLICABILITY

The requirements of Section 5.5 apply to the owner or operator of any property with regulated asbestos contaminated soil (RACS) at which soil-disturbing activities are occurring or planned. The owner/operator may choose to follow the procedures set forth in Sections 5.5.1(A) and 5.5.1(B) below when debris is exposed or disturbed to determine if the debris is RACS. The requirements of Sections 5.5.1(C) and 5.5.1(D) apply when RACS is exposed or disturbed.

(A) Any person who disturbs debris or exposes debris during a soil disturbing activity shall characterize debris to determine the applicability of Section 5.5, and have appropriate personnel to characterize debris. Any person who disturbs debris or exposes debris during a soil disturbing activity shall:

- (1) Conduct visual inspection of disturbed material;
- (2) If debris is exposed during soil disturbing activities, and/or the soil or ash is known to contain asbestos fibers, through documented evidence, then Section 5.5 is applicable. If there is no visible RACS or documented evidence of RACS at a site, an owner/operator does not have a duty under these regulations to sample or otherwise investigate for RACS prior to commencing soil disturbing activities;
- (3) If debris is exposed that only contains green waste, and/or natural stone with no associated material suspected of containing asbestos fibers, then Section 5.5 is not applicable.
- (4) In the event of an emergency in which a soil disturbing activity in an area of debris must continue or commence at once, a RACS determination in accordance with Section 5.5.1(B) may be postponed during the initial response to the immediate emergency. However, the RACS determination must be made within 48 hours of the initial emergency response.
- (5) Any person who exposes but does not disturb debris during a soil disturbing activity shall have protocols to characterize debris as required by this section 5.5.1(A) and stabilize any debris determined to be RACS as required by Section 5.5.7(K), unless the debris is exempted by subsection 5.5.2(A) through (F).

(B) Any person who disturbs debris during soil disturbing activities, when the subject debris is not excluded within Section 5.5.1(A)(3), must inspect the debris, through continuous visual inspection during soil disturbing activities, to determine if the debris is, or contains, suspect asbestos-containing material (ACM). If debris is exposed that only contains metal, glass, plastic, wood, and/or bare concrete with no associated material suspected of being ACM (such as sealants, adhesives, mastics, coatings, adhered materials, or resins), then Section 5.5 is not applicable. The

person(s) conducting the visual inspection must be a Qualified Project Monitor (QPM) or a Certified Asbestos Building Inspector (CABI).

All suspect ACM(s) must be:

- (1) Assumed to be ACM; or
- (2) Sampled by a CABI. The samples shall be analyzed by a National Voluntary Laboratory Accreditation Program (NVLAP) participating laboratory utilizing Polarized Light Microscopy (PLM) (EPA Method 600/R-93/116 or equivalent) to determine if it is ACM; or
- (3) Determined to be ACM, or non-ACM, through the use of documentation specific to the material observed in the field establishing the asbestos content of the material (e.g. laboratory analysis results from previous encounters with the same material).
- (4) The ACM determination shall be made within seven (7) calendar days of discovery of the debris.
  - (a) Within 24 hours of discovery of debris, and until the ACM determination is made, the debris shall be stabilized in accordance with Section 5.5.4(A)(3) of these regulations.
  - (b) No additional disturbance, other than necessary to perform the required stabilization in Section 5.5.4(A)(3), of the debris shall occur prior to the asbestos determination.
- (5) A person who disturbs debris, determined or assumed to be or contain ACM per this 5.5.1(B), shall determine if the ACM is exempted in accordance with Section 5.5.2 of these regulations.
- (6) A person who disturbs debris, determined or assumed to be or contain ACM per this 5.5.1(B), shall make a RACS determination by:
  - (a) Assuming the debris containing ACM is RACS and managing the RACS in accordance with Section 5.5 of these regulations; or
  - (b) Applying site and material specific knowledge of the presence or absence of RACS based on observation and/or documented evidence about the nature of ACM(s).
- (7) The owner/operator shall retain, or make available for inspection, records of all RACS determinations onsite for the duration of the debris disturbance, which shall be retained by the owner/operator for a period of six (6) months after the completion of debris disturbing activities.

(C) Soil or ash known to contain non-visible asbestos, based on documented evidence, is RACS and if exposed or disturbed shall be managed in accordance with these regulations.

(D) If soil, ash, or debris is, or contains, RACS then:

(1) RACS that is exposed or disturbed shall be managed, disposed of, or reused in accordance with these regulations.

(2) Removal of ACM that is on, or comprises, a facility component, that is located on or in soil that will be disturbed, shall be conducted under this Section 5.5, in accordance with work practices in Air Quality Control Commission Regulation No. 8 (5 CCR 1001-10, Part B), Section III.V, and is not subject to the permit requirements of 5 CCR 1001-10, Part B, if the total quantity of ACM is below the following trigger levels:

- (a) 260 linear feet on pipes; or
- (b) 160 square feet on other surfaces; or
- (c) The volume of a 55-gallon drum.

(3) RACS that is generated and not disposed of or reused in compliance with Section 5.5.8 of these regulations is solid waste and shall be managed in accordance with the landfill requirements of the Colorado Solid Wastes Disposal Sites and Facilities Act (C.R.S. 30-20, Part 1) and Sections 5.1 through 5.4 of these regulations.

(4) Except as provided in Section 5.5.1(D)(5), a person who disturbs or exposes RACS shall make the decision upon the initial discovery of RACS to either manage the RACS in accordance with Section 5.5, or cease soil disturbing activities and permanently stabilize the disturbed or exposed RACS to control the release of asbestos fibers in accordance with one of the following:

- (a) Cover RACS with geofabric, or equivalent visible and physical barrier, and restore the site to pre-disturbance conditions using fill suitable for unrestricted use; or
- (b) Cover RACS with geofabric, or other visible and physical barrier, followed by eighteen (18) inches of fill suitable for unrestricted use, and vegetation; or
- (c) Cover RACS with geofabric, or other visible and physical barrier, followed by six (6) inches of fill suitable for unrestricted use, and concrete or asphalt; or
- (d) Cover RACS with geofabric, or other visible and physical barrier, followed by fill suitable for unrestricted use to grade for vertical excavation faces or trenches; or
- (e) Alternate cover designs as approved by the Department.

(5) RACS that is driven upon is an RWA and shall be kept adequately wet in order to prevent visible emissions from leaving the RWA, or demonstrate that asbestos is

not leaving the RWA above risk based thresholds. All equipment surfaces that have come into contact with RACS shall be decontaminated per Section 5.5.7(I) before leaving the RWA.

## **5.5.2 EXEMPTIONS**

- (A) Removal of ACM on a facility component with asbestos quantities above the trigger levels, as defined in 5.5.1(D)(2), is subject to the permit and abatement requirements of Air Quality Control Commission Regulation No. 8 (5 CCR 1001-10, Part B), and is therefore not subject to this Section 5.5., but shall still comply with Sections 5.1 through 5.4 of these regulations.
- (B) Spill response activities that are subject to the requirements of Air Quality Control Commission Regulation No. 8 (5 CCR 1001-10, Part B) are not subject to the requirements of Section 5.5, but shall still comply with Sections 5.1 through 5.4 of these regulations.
- (C) Ambient occurrences of asbestos fibers in soil that are demonstrated to be the result of background conditions and not the result of site specific activities are not subject to the requirements of this Section 5.5. This background demonstration shall be submitted to, and approved by, the Department prior to the exemption being exercised.
- (D) During active solid waste disposal operations, asbestos waste disposal areas that have a certificate of designation are not subject to Section 5.5, but shall comply with the facility's Engineering Design and Operations Plan.
- (E) De minimis projects involving a total RACS disturbance of less than one (1) cubic yard, utilizing low-emission methods, are exempt from this Section 5.5, except for the decontamination procedures in Section 5.5.7(I) and the disposal requirements in Section 5.5.8.
- (F) Projects conducted directly by a homeowner on their residence not used for the purpose of generating of income, including residential landscaping projects and other private residential soil-disturbing projects conducted after the primary dwelling is built, such as planting trees, digging holes for fence posts, installing sign posts, gardening, other such projects conducted by homeowners on their residence, as described above, are not subject to this Section 5.5, but shall still comply with Sections 5.1 through 5.4 of these regulations.
- (G) Soil disturbing activities involving Non-RACS, where no RACS is present or generated, are not subject to the requirements of Section 5.5, but Non-RACS must be disposed as non-friable asbestos waste in accordance with the disposal requirements set forth in Section 5.2 of these regulations.



- (H) Soil disturbing activities involving debris that only contains metal, glass, plastic, wood, and/or bare concrete with no associated material suspected of being ACM (such as sealants, adhesives, mastics, coatings, adhered materials, or resins), as determined by a CABI, QMP, or generator knowledge, are not subject to the requirements of Section 5.5.
- (I) Soil disturbing activities involving debris that only contains green waste or natural stone are not subject to the requirements of Section 5.5.

### **5.5.3 TRAINING**

- (A) All personnel inside the regulated work area (RWA) during the disturbance of RACS shall have annual awareness training. Except as provided in Section 5.5.3(F), this training requirement also applies to equipment operators and drivers of trucks carrying contaminated material for offsite disposal or reuse. This training shall cover information necessary to comply with Section 5.5 requirements and the approved project specific RACS management plan (PSMRP) or standard operating procedure (SOP) (if any) including:
  - 1) General asbestos awareness; including health effects; and
  - 2) Overview of the requirements of Section 5.5 and its implementation; and
  - 3) Overview of suspect ACM that requires further evaluation by a CABI; and
  - 4) Overview of RACS and Non-RACS; and
  - 5) Worker protection, including respiratory protection. An overview of the levels of personal protective equipment (PPE) required for various activities and conditions; and
  - 6) Decontamination requirements for equipment and personnel including the establishment of decontamination station(s); and
  - 7) Engineering controls in order to prevent visible emissions from leaving the RWA or demonstrate that asbestos is not leaving the RWA above risk-based air thresholds; and
  - 8) Overview of RACS handling procedures.

This training shall be conducted by a CABI who is familiar with the site specific plan and/or the Standard Requirements in Section 5.5.7. Records of this training shall be retained, by the owner/operator, and be available for inspection, for a minimum of one year from the date of the training.

(B) In addition to the annual asbestos awareness training required in 5.5.3(A), all personnel inside the RWA during the disturbance of RACS shall have per-project site-specific awareness training. Except as provided in Section 5.5.3(F), this training requirement also applies to equipment operators and drivers of trucks carrying contaminated material for offsite disposal or reuse. This training shall cover site-specific information necessary to comply with Section 5.5 and the selected management approach for the project (PSRMP, SOPs, or the standard requirements of Section 5.5.7), including:

- 1) An overview of the items from 5.5.3(A) as they pertain to site specific provisions and/or conditions that will affect work practices; and
- 2) Project chain-of-command and identification of authorized personnel with stop work authority, and identification of QPM(s); and
- 3) Hands on training specific to the soil disturbing activities the individual will be performing subject to this Regulation.

This training shall be provided by a CABI who meets the training requirements of 5.5.3(D). Records of this training shall be retained by the owner/operator, and be available for inspection, for the duration of the project for which the training was conducted.

(C) Qualified Project Monitors shall have, at a minimum:

- 1) Annual asbestos awareness training and site specific awareness training under Section 5.5.3(A) and (B); and
- 2) Training from a CABI on identifying debris, exempted materials under Section 5.5.1(A)(3), and the assumption of debris to be RACS as outlined in Section 5.5.1; and
- 3) Training from a CABI on how to implement the standard requirements under Section 5.5.7 and how to perform the duties that a QPM may perform in lieu of a CABI; and
- 4) Training from a CABI on how to implement the provisions of the chosen RACS management approach (PSRMP, SOPs, or standard requirements of Section 5.5.7) and how to perform the duties that a QPM may perform in lieu of a CABI; and
- 5) Forty (40) verifiable hours of direct experience implementing Section 5.5.

Records of this training shall be retained by the owner/operator, and be available for inspection for the duration of the project for which the training was conducted.

- (D) Visual Inspection and identification of RACS shall be conducted by a CABI, with forty (40) verifiable hours of on the job asbestos in soils experience on a minimum of three (3) different asbestos in soils projects, conducted under either AQCC Regulation No. 8 or Section 5.5. The CABI shall be independent of the general contractor (GC) and/or abatement contractor unless the CABI and the GC or abatement contractor are both direct employees of the property owner. However, the GC or abatement contractor may hire a subcontractor CABI, but the CABI shall not be a direct employee of the GC or abatement contractor.
- (E) Air monitoring conducted in accordance with this Section 5.5 shall be performed by an Air Monitoring Specialist (AMS).
- (F) Truck drivers who do not complete the training in 5.5.3(A) and (B) are ancillary workers. Soil disturbing activities must cease if the truck driver is present within the RWA unless the driver remains in the cab of the truck, the truck's windows and doors remain closed, and the air handling system remains off while the truck is inside the RWA.

#### **5.5.4 RESPONSE TO UNPLANNED RACS DISCOVERY**

Soil disturbing activities that expose RACS without previously approved plans are subject to the following requirements:

- (A) IMMEDIATE ACTIONS: Immediate actions shall be taken by the person conducting the soil disturbing activity, or representative of the owner or operator, to manage RACS in accordance with Section 5.5 and Section 1.2 definitions of these Regulations. These actions shall include, at a minimum, the following:
  - (1) Stopping all soil disturbing activities related to RACS, until the 24-hour notification requirements in Section 5.5.4(B), and the interim action requirements in Section 5.5.4(C), are met. In the event of an emergency in which a soil disturbing activity must continue or commence at once, notification shall be made as soon as possible, but within 24 hours of identifying or assuming the presence of RACS within the soil disturbing area. During the initial response to the immediate emergency, the standard requirements of Section 5.5.7 shall be implemented to the extent possible. Within 48 hours, any disturbed and/or exposed RACS shall be managed in accordance with the standard requirements of Section 5.5.7, an approved PSRMP, or an approved SOP.
  - (2) Establishing and taking measures in order to prevent access to the RWA by unauthorized persons. Instances of unauthorized access not under the control of the owner/operator shall be evaluated to determine if additional access controls are warranted. The unauthorized access, and the response actions taken, shall be documented and provided to the Department within 48 hours of the incident.

(3) Conducting interim surface soil stabilization to reduce emissions including:

- a. Polyethylene sheeting or geofabric with daily inspection, and inspection after storm events, and repair/replacement of sheeting as necessary to maintain stabilization; or
- b. Chemical stabilizer demonstrated to be effective in the stabilization of RACS (e.g. magnesium chloride) with weekly inspection, and inspection after storm events, and re-application of chemical stabilizer as necessary to maintain stabilization; or
- c. Minimum of three (3) inches of soil appropriate for unrestricted use; or
- d. Other means of stabilization as approved by the Department.
- e. Stabilization is not required if RACS is kept adequately wet. Verification of adequately wet conditions shall be conducted at least every two (2) hours, or RACS shall be stabilized by one of the methods described in (3)(a-d) above.

(B) 24-HOUR NOTIFICATION REQUIREMENTS: The owner/operator, or owner/operator representative shall submit a completed Notification of RACS Disturbance form to the Department's Hazardous Materials and Waste Management Division within 24 hours of identifying RACS during a soil disturbing activity.

(C) INTERIM ACTIONS: In accordance with Section 5.5.5, the owner/operator, or owner/operator representative, shall submit to the Department's Hazardous Materials and Waste Management Division, for review and approval, within five (5) working days of the discovery, a PSRMP, SOPs, or indicate the standard requirements of Section 5.5.7 will be followed on the Notification of RACS Disturbance form submitted to the Department.

(D) Once the requirements of Sections 5.5.4(A), (B), and (C) are completed, any soil disturbing activities shall proceed in accordance with applicable requirements.

### **5.5.5 RESPONSE TO PLANNED RACS MANAGEMENT**

Planned soil disturbing activities involving RACS shall be conducted in accordance with the standard requirements identified in Section 5.5.7, and with one of the following management strategies and the associated notification requirement:

(A) PROJECT SPECIFIC RACS MANAGEMENT PLAN (PSRMP);

- (1) The owner/operator, or owner/operator representative, shall submit a completed Notification of RACS Disturbance form to the Department's Hazardous Materials and Waste Management Division at least ten (10) working days prior to any planned soil disturbing activity. This notification shall include submittal of a PSRMP conforming to the requirements of Section 5.5.5(A)(2). The Department will acknowledge receipt of a notification of the intent to utilize a PSRMP by mail or electronic correspondence. The PSRMP shall be approved by the Department prior to implementation.

(2) If the owner/operator choose(s) management in accordance with this Section 5.5.5(A), a PSRMP shall be developed and submitted to the Department's Hazardous Materials and Waste Management Division for review and approval prior to implementation. The Department will use its best efforts to review and respond to the plan within ten (10) working days of receipt. The PSRMP shall include the following:

- (a) Property representative's name and phone number; and
- (b) Property location; and
- (c) General site description, including a description of RACS and the types of known or assumed ACM(s), and the location(s) of these material on the site; and
- (d) Description of planned soil disturbing activities; and
- (e) Description of site management, emission control activities, and work practices to control the release of, and/or exposure to, asbestos outside of the RWA including:
  - (i) Measures to assure that the soil is adequately wet (as that term is defined in Section 1.2 of these regulations), stabilized, or covered during soil disturbing activities; and
  - (ii) Wind speed monitoring during RACS disturbance, including frequency of monitoring, and shutdown and start up criteria; and
  - (iii) An air monitoring plan designed to detect asbestos at the perimeter of the RWA as an indication that the measures to control the release of asbestos outside of the RWA are effective. The plan may include a tiered air monitoring approach providing less frequent air monitoring given demonstrated effectiveness of work practices; and
  - (iv) Work practices specific to mechanical and/or hand disturbance of RACS including measures in order to prevent the release of visible emissions outside of the RWA, or demonstrate that asbestos is not leaving the RWA above risk-based air thresholds; and
  - (v) Work practices for the loading and placement of RACS including spill prevention procedures.
  - (vi) The owner /operator has the option to erect a structure maintained at a negative pressure differential sufficient to contain all dust, with off-gas from the evacuation system treated with HEPA filtration. If this option is chosen, the requirement to submit an air monitoring plan, under Section 5.5.5(A)(2)(e)(iii) is not applicable.

and

- (f) Description and location of any planned sampling. All sampling shall be performed in accordance with the procedures set forth in Appendix 5A. All investigation derived waste shall be managed in accordance with Section 5.5.8.

- (3) A copy of the PSRMP shall be maintained on the site during RACS disturbing activities.
- (4) At the option of the owner/operator and upon notice to the Department, a Soil Characterization and Management Plan approved prior to the effective date of this amended Section 5.5, and that complies with the substantive requirements of the regulation prior to amendment, shall remain in effect until the completion of the subject project or until it is replaced by a PSRMP.

#### (B) STANDARD OPERATING PROCEDURES (SOPs)

- (1) The owner/operator, or owner/operator representative, shall notify the Department's Hazardous Materials and Waste Management Division, by submitting a completed Notification of RACS Disturbance form, prior to implementation of the previously approved SOPs at a RWA. SOPs that conform to Section 5.5.5(B)(2) shall be approved by the Department prior to implementation. The Department will acknowledge receipt of a notification of the intent to utilize an SOP by mail or electronic correspondence.
- (2) If the owner/operator chooses management in accordance with this Section 5.5.5(B), the owner/operator shall develop and submit to the Department's Hazardous Materials and Waste Management Division, for review and approval, thirty (30) calendar days in advance of any RACS disturbing activities, SOPs that conform with Section 5.5.5(A)(2)(a) – (f) that will be implemented, upon notice to the Department per Section 5.5.5(B)(1), at future RWA(s). A copy of the SOPs shall be maintained on site during RACS disturbing activities for the duration of the Project.
- (3) At the option of the owner/operator and upon notice to the Department, a SOP approved prior to the effective date of this amended Section 5.5, and that complies with the substantive requirements of the regulation prior to amendment, shall remain in effect and may be used to comply with the amended regulation.

#### (C) STANDARD REQUIREMENTS OF SECTION 5.5.7

The owner/operator, or owner/operator representative, shall submit to the Department's Hazardous Materials and Waste Management Division a completed Notification of RACS Disturbance form indicating the intent to utilize the standard requirements of Section 5.5.7, as a default RACS management plan, prior to any planned soil disturbing activity. This notification shall include property location, general site description, and contact information for the owner/operator responsible for the RWA activities. The Department will acknowledge receipt of a notification of the intent to utilize the standard requirements of Section 5.5.7 by mail or electronic correspondence.

#### (D) RISK BASED APPROACH

The owner/operator may choose to submit, for Department review and approval, a site-specific risk assessment work plan to evaluate the risks of the proposed work practices associated with planned disturbance activities in an area or areas of RACS.

#### 5.5.6 REMEDIATION OF ASBESTOS IN SOIL

- (A) Remediation is not required of properties at which ACM, RACS, or asbestos waste is located. If the owner of a property chooses to remediate (rather than just manage) all or a portion of the property containing ACM, RACS, or asbestos waste a Remediation Plan shall be submitted to the Department's Hazardous Materials and Waste Management Division for review and approval prior to commencement of activities associated with the remediation. The Remediation Plan shall comply with this Section 5.5, and include the following:
- (1) The standard requirements in accordance with Section 5.5.7, and the plan requirements outlined in Section 5.5.5(A). Alternatively, a risk based approach pursuant to Section 5.5.5(D) may be proposed, for Department review and approval, for disturbance of RACS; and
  - (2) A detailed description of planned remediation activities, including proposed depth and areal extent of remediation, and work practices to be implemented; and
  - (3) The proposed use of the property and area of remediation; and
  - (4) Any planned engineering or institutional controls in order to prevent exposure to any asbestos left in place, or minimize exposure below a risk-based concentration approved by the Department, within the area covered by the Remediation Plan, and
  - (5) A schedule for submittal of a Remediation Completion Report that incorporates the information from Section 5.5.7(L) and any additional information necessary to demonstrate that the remediation goals have been achieved.
- (B) The Department shall use its best efforts to provide written notification that a Remediation Plan has been approved or disapproved within no more than forty-five (45) calendar days after a request by a property owner, unless the property owner and the Department agree to an extension of the review to a date certain.
- (C) If a remedial decision is made by the Department, the area subject to the remedial decision may be subject to C.R.S. Section 25-15-320(2), and an environmental covenant may be required for waste left in place.

## 5.5.7 STANDARD REQUIREMENTS FOR THE DISTURBANCE OF RACS

The requirements of this section, if followed in their entirety, constitute a default RACS management plan, eliminating the need to submit a PSRMP or SOP.

### (A) ESTABLISHMENT AND CONTROL OF A REGULATED WORK AREA (RWA)

(1) Requirements for establishment and control of a RWA applicable to all projects subject to this Regulation:

- (a) Establish a RWA which is identifiable to all persons. Haul roads between RWAs, where RACS is not present, are considered to be outside the RWA(s); however, equipment decontamination [Section 5.5.7(I)] and spill response procedures [Section 5.5.7(J)] shall be followed; and
- (b) Stop all soil disturbing activities in the RWA if ancillary workers or members of the public are present within the RWA. Truck drivers who do not complete the training under Sections 5.5.3(A) and (B) are ancillary workers. Soil disturbing activities must cease if the truck driver is present within the RWA unless the driver remains in the cab of the truck, the truck's windows remain closed, and the air handling system remains off while the truck is inside the RWA; and
- (c) Post labeling and signage to demarcate RWA(s). The RWA shall be demarcated by visible means that fully defines the extent of the RWA. Labeling and signage shall indicate the presence of asbestos, and that the area is off limits to unauthorized personnel.

(2) **Additional Requirement for Projects Disturbing RACS Containing Friable ACM.** Establish a secured work site (e.g., fencing with locks/zip-ties/chains). Personnel, or staff assigned to this duty, may be used to secure the RWA in lieu of fencing. If the RWA is located within a larger secure facility, fencing of the RWA is not necessary as long as the RWA is secured.

### (B) PERSONAL PROTECTIVE EQUIPMENT (PPE) FOR THE PURPOSES OF PREVENTING CROSS-CONTAMINATION

(1) Requirements applicable to all RWAs subject to this Regulation:

- (a) Use of disposable booties or impermeable footwear that will be decontaminated per Section 5.5.7(I); and
- (b) Use of disposable gloves or impermeable gloves that will be decontaminated per Section 5.5.7(I); and
- (c) Replace or decontaminate (per Section 5.5.7(I)) all PPE in all instances where the integrity of the PPE is compromised, and when workers exit the RWA; and
- (d) Decontaminate (per Section 5.5.7(I)) or dispose of all used PPE as asbestos contaminated waste.



- (2) **Additional Requirement Applicable to Projects at RWAs Containing Friable ACM.** Use of disposable impermeable suits or equivalent coveralls, remove suits or coveralls upon exiting the RWA, and dispose of used suits or coveralls as asbestos contaminated waste.

(C) WETTING

- (1) Wetting requirements applicable to all RACS disturbance:

- (a) Adequately wet all RACS and soils, or other materials containing RACS, on the surface and in the sub-surface prior to and during RACS disturbance, except as provided in Section 5.5.7(F)(1)(b)(ii). Pre-wetting is not necessary if soils are already adequately wet. Apply water or amended water (as required in Section 5.5.7(C)(2)) at low pressure in order to minimize dust generation and splattering to prevent visible emissions from leaving the RWA, or demonstrate that asbestos is not leaving the RWA above risk-based thresholds.
- (b) Mist RACS and soils, or other materials, containing RACS during placement as needed to maintain the material in an adequately wet condition using equipment mounted spray bars, or additional hose operator(s).
- (c) Except as provided in (d) below, incidental occurrences of visible emissions leaving the RWA shall be managed by evaluating site conditions and engineering controls for each occurrence of visible emissions, and immediately implementing any identified engineering control revisions necessary in order to prevent future occurrences of visible emissions. All instances of visible emissions leaving the RWA shall be documented as required in Section 5.5.7(L) of this regulation.
- (d) When utilizing the risk-based air monitoring threshold approach to evaluate the effectiveness of adequately wetting, visible emissions are allowed to leave the RWA as long as the risk-based air threshold is not exceeded.

- (2) **Additional requirement for RACS that contains friable ACM.** Use amended water containing a wetting agent, such as a 50:50 mixture of polyoxyethylene ester and polyoxyethylene ether, or the equivalent, in a 0.16 percent solution (1 ounce to 5 gallons) of water, or as per manufacturer recommendations for the wetting of asbestos. This requirement may be waived by the Department for emergency situations where the work must occur immediately and wetting agents are not available.

(D) WIND SPEED MONITORING

- (1) Requirements applicable to all projects involving mechanical disturbance of RACS, and hand disturbance of RACS containing friable ACM:

- (a) Take wind measurements from within the RWA using a hand held anemometer. Alternatively, or in conjunction with hand held measurements, an onsite weather station may be used within a quarter mile of the RWA as long as the conditions measured by the weather station are representative of conditions in the RWA.
  - i. Collect wind speed measurements at a minimum of thirty (30) minute intervals and during wind gust(s). Average wind speed measurements shall be obtained manually by taking ten readings at one minute intervals and averaging the ten readings, or through the use of instrumentation that provides a ten minute average wind speed reading.
  - ii. If wind break barriers are used, wind speed measurements may be taken from within barriers; however, wind speed measurements shall also be taken outside the wind break barriers if any RACS disturbing activities, such as loading, are taking place outside or above the barriers. Wind speed shut-down criteria shall be based on measurements taken that are representative of the area of active RACS disturbance.
- (b) Immediate stoppage of all RACS disturbance shall occur based on results of wind speed monitoring conducted in accordance with subsection (a) and exceedance of the following criteria:
  - i. Wind gust(s) in excess of 20 mph, or
  - ii. Sustained winds in excess of 12 mph, averaged over ten (10) minutes, or
  - iii. Winds are interfering with the ability of engineering controls to work as intended, or
  - iv. Winds are creating visible emissions that leave the RWA.
- (c) RACS disturbance may resume when all of the following criteria are met:
  - i. No gust(s) in excess of 20 mph occur for twenty (20) minutes, and
  - ii. No sustained winds in excess of 12 mph occur for twenty (20) minutes, based on a ten (10) minute average wind speed measurement, and
  - iii. Winds are not interfering with the ability of engineering controls to function as intended, and
  - iv. Winds are not creating visible emissions that leave the RWA.

#### (E) AIR MONITORING

- (1) If using the risk-based air threshold approach to monitor the effectiveness of adequately wetting:
  - (a) Air monitoring to determine asbestos content of visible emissions allowed to leave the RWA, for comparison to the risk-based air thresholds shall not be utilized for projects that are less than ten (10) days in duration.

- (b) Air monitoring to determine asbestos content of visible emissions allowed to leave the RWA, for comparison to the risk-based air thresholds, shall begin on the first day of the project.
  - (c) A minimum of four (4) air samples per day shall be collected for TEM analysis.
  - (d) Sample collection, analysis, and data evaluation shall be conducted in accordance with Appendix 5A.
- (2) If preventing visible emissions leaving the RWA as an indication of the effectiveness of work practices, not for risk evaluation, air monitoring is required during mechanical disturbance of RACS in RWAs with an adjacent receptor zone:
- (a) No air monitoring is required for RACS disturbance that will not exceed a duration of two (2) days. However, the requirements for adequate wetting (Section 5.5.7(C)) and no visible emissions leaving the RWA (Section 5.5.7(F)) shall be adhered to on all RACS disturbance projects. Dividing projects into multiple two (2) day or shorter components shall not be used as a mechanism to avoid air monitoring requirements.
  - (b) Area monitoring shall consist of a minimum of four (4) samples collected on the perimeter of the RWA at appropriate intervals to provide representative information regarding potential releases of asbestos fibers to the adjacent receptor zone(s). Additional samples shall be collected for large perimeter RWAs (greater than one (1) acre). RWAs greater than one (1) acre shall require additional perimeter monitoring points be added at a rate of one (1) sample for every 200 linear feet (or approximately each additional  $\frac{1}{4}$  acre). If representative information about potential releases to the adjacent receptor zone(s) can be collected using less than the minimum number of samples, the remaining sample locations shall be at the discretion of the AMS.
  - (c) Phase Contrast Microscopy (PCM) analysis is required on all samples collected (unless all samples will be analyzed by Transmission Electron Microscope (TEM) by default). The laboratory shall be requested to provide verbal results to the AMS or the QPM by the start of the next working day, or as soon as possible after the start of the next working day, with written results within 24 hours of the receipt of verbal results. A consultation with the Department is required If this timeframe cannot be met by the laboratory.
  - (d) Upon receipt of a laboratory report indicating a “cannot be read (CBR)”, or a “not analyzed (NA) or rejected” due to loose debris or uneven loading, analysis result:
    - i. The AMS shall evaluate the lab report and any field documentation to determine a possible cause for the CBR or “not analyzed (NA) or rejected” result; and

- ii. If the CBR or “not analyzed (NA) or rejected” cannot be correlated to a specific field event that compromised the sample (e.g. the sample was blown over, the filter of the sample was sprayed with water) then the sample shall be prepared for indirect TEM presence/absence analysis to determine potential asbestos content in accordance with Appendix 5A; and
  - iii. If the CBR or “not analyzed (NA) or rejected”, analysis result can be correlated to a compromised sample, then preparation for indirect TEM presence/absence analysis is not required as long as adequate air monitoring data is available to evaluate the effectiveness of engineering controls. However, overloading of a sample with particulate matter does not constitute a compromised sample, and will require indirect preparation for TEM presence/absence analysis; and
  - iv. Field personnel shall evaluate why the sample was compromised and modify field procedures as necessary to avoid future samples from being compromised; and
  - v. The Department project manager shall be notified by phone or email of instances of CBR or “not analyzed (NA) or rejected” analysis results within 24 hours of receipt of verbal results.
- (e) TEM presence/absence analysis is required (analysis providing fiber counts/concentrations is always optional) as described in paragraphs (i) through (iv) below. The laboratory shall be requested to provide verbal results by the start of the next working day, or as soon as possible after the start of the next working day, with written results within 24 hours of the receipt of verbal results.
- i. All samples, required by this Section 5.5, with PCM results having fiber concentrations greater than 0.01f/cc shall be submitted for TEM analysis.
  - ii. During the first five (5) days of RACS disturbance – A minimum of 25% of the samples collected from each RWA, inclusive of the downwind floating samples as described in 5.5.7(E)(2), shall be submitted for TEM analysis. The sample(s) selected for TEM analysis shall have the highest PCM result(s) based on fiber concentration. If all PCM results are Below Detectable Limit (BDL) for fiber concentration, then the sample(s) selected for TEM analysis shall be determined by highest fiber count. If all samples have no fiber counts (i.e. zero (0) fibers counted, not a “below detection limit” fiber concentration) then no TEM analysis is required.
  - iii. After five (5) days of RACS disturbance with no asbestos detections by TEM analysis, the frequency of analysis by TEM, on the highest 25% of PCM results(s), may be reduced to once every five (5) days of RACS disturbance, or portions thereof, using the same selection criteria as in paragraphs (i) and (ii) above. The samples submitted for TEM analysis during the period of reduced frequency TEM analysis shall be either the first occurrence of: 1) high winds exceeding wind shut down criteria, or 2) visible emissions. In the absence of high wind events or visible emissions

the selected day for TEM analysis may be random, as determined by the AMS.

- iv. If there are any asbestos detections during the random once every five (5) days of RACS disturbance analysis by TEM, then TEM analysis shall be conducted for the next three (3) consecutive days of RACS disturbance, or portions thereof, using the same procedures as in paragraph (i) and (ii) above. If there are no additional asbestos detections during the next three (3) consecutive days of RACS disturbance with samples submitted for TEM analysis, then the frequency of TEM analysis may return to random once every five (5) days of RACS disturbance.
  - v. If site conditions, friability of the materials being managed, or work practices change, then the initial five (5) days of TEM analysis shall restart using the provisions set forth in this Section 5.5.7(E)(1)(e).
- (f) Detection or presence responses - For each detection of asbestos by TEM analysis, the following shall be conducted:
- i. Notify the Department project manager by phone or email, on the same calendar day as receipt of verbal or written results (whichever comes first) from the laboratory.
  - ii. Evaluate site conditions and engineering controls for each detection, and immediately implement any identified engineering control revisions necessary with the goal of preventing future detections of asbestos fibers.
  - iii. Submit an Emission Control Plan (ECP) to the Department project manager for each detection (days with multiple detections can be addressed by a single ECP). The ECP shall be submitted within 48 hours from the asbestos detection event and shall contain:
    - 1. The date of the detection.
    - 2. A written description of sample details (sample ID, number of structures detected, type of asbestos detected, PCM analytical result) and any potential cause of the release. Include a description of site activity (engineering controls being employed, equipment being used, size of excavation/soil disturbing activity, types of materials identified, etc.) and CABI observations at the work area before and during the presumed time of release.
    - 3. A diagram or write up of all air sample positions clearly indicating which sample received the TEM detection. Indicate, through illustration or description, prevailing wind direction and average wind speeds for the detection event; include any wind speed shutdowns for the date of detection. If applicable, indicate downwind floater air sample relocation times and new positions through illustration or description.
    - 4. Laboratory reports confirming the type and amount of fibers detected by TEM analysis.

5. Other pertinent information that will additionally describe the release and/or will assist in the prevention of future releases from the RWA.
6. A written description of actions taken and any other proposed actions with the goal of preventing future releases from the RWA.
7. If the owner/operator believes fibers are coming from offsite and are not under the control of the owner/operator, then, in addition to the information provided in the ECP, documentation shall be provided demonstrating additional sources of asbestos fibers.

(g) If there are three (3) TEM detections on consecutive analysis events or ten (10) detections for a single project, consultation with the Department is required to determine if the standard requirements of Section 5.5.7 are being implemented appropriately and whether:

- i. Changes in the standard requirements of Section 5.5.7 are likely to prevent future releases; or
- ii. Changes in the standard requirements of Section 5.5.7 are not likely to prevent future releases and a PSRMP is necessary per Section 5.5.5(A) (2); or
- iii. If the owner/operator believes fibers are coming from offsite and are not under the control of the owner/operator, then, in addition to the information provided in the ECP, documentation shall be provided demonstrating additional sources of asbestos fibers. Air samples shall be collected and analyzed following the analytical procedures of Appendix 5A for the type of project being conducted; and
- iv. Additional consultation with the Department is required to determine whether additional engineering controls for structures within the adjacent receptor zone are appropriate.

**(3) Additional requirement for projects disturbing RACS containing friable ACM.** Collect two (2) additional downwind floating samples for mechanical disturbance of RACS containing friable ACM. The samplers shall be moved based on prevailing wind direction and adjacent receptors. For example, if adjacent receptors are present on only one side of the RWA, one sample location should be maintained between the RWA and the adjacent receptor.

#### **(F) WORK PRACTICES TO BE FOLLOWED DURING RACS DISTURBANCE**

(1) Work practice requirements applicable to all management of RACS:

(a) Prevent visible emissions from leaving the RWA, or demonstrate that asbestos is not leaving the RWA above risk based thresholds by:

- i. Excavating in lifts not to exceed the extent of wetting; or

- ii. Conducting continuous wetting while mixing dry materials at the point of RACS disturbance to ensure all materials are adequately wet prior to removal from the excavation.
    - iii. Instances of visible emissions leaving the RWA shall be documented and addressed by changing or increasing controls (e.g. more effective wetting, reduced speed of excavation).
  - (b) RACS on exposed excavation faces that will be disturbed and/or managed during the project shall either be kept adequately wet (in accordance with Section 5.5.7(C)), or be stabilized using any of the following in order to prevent visible emissions from leaving the RWA, or demonstrate that asbestos is not leaving the RWA above risk based thresholds:
    - i. Polyethylene sheeting or geofabric with daily inspection, and inspection no later than twelve (12) hours following a storm event, and repair/replace sheeting as necessary to maintain stabilization; or
    - ii. Chemical stabilizer demonstrated to be effective in the stabilization of RACS (e.g. magnesium chloride) with weekly inspection, and inspection no later than one (1) calendar day following a storm event, and re-application of chemical stabilizer as necessary to maintain stabilization; or
    - iii. Minimum of three (3) inches of soil appropriate for unrestricted use.
  - (c) Stormwater shall be managed in accordance with the Water Quality Control Commission's stormwater regulations (5 CCR 1002-61), which include specific stormwater permitting and management requirements for construction sites. The Water Quality Control Division should be contacted to determine the specific requirements for each project. Stormwater shall be managed in a manner that minimizes run on and runoff from RACS. Stormwater that comes into contact with RACS shall be treated as asbestos contaminated water in accordance with Section 5.5.7(J)(4), and other material(s) impacted by asbestos contaminated stormwater shall be managed as RACS in accordance with Section 5.5.7(J)(3).
- (2) Work Practice requirements applicable to the management of RACS using hand methods on surfaces or in the subsurface:
- a. Wet and remove the RACS and six (6) inches, in all directions, of surrounding soil or other material from the last occurrence of visible ACM; and
  - b. A CABI shall confirm that the visible extent of ACM and surrounding soil, or other material, has been removed (or extent of excavation has been reached). If RACS remains, it shall be managed for stabilization or future removal. If there is no documented evidence of non-visible RACS at the site, then a visual inspection and clearance shall be sufficient to determine the removal of RACS. If there is documented evidence of non-visible

RACS at the site, sampling is required to confirm the removal of RACS. After the removal of the additional six (6) inches, and in the absence of any debris, a QPM may make the determination that RACS has been removed; and

- c. If RACS remains in the RWA, it shall be managed for stabilization, per Section 5.5.7(K), or future removal.
- d. In lieu of stabilization or full removal, sampling may be performed per Section 2.2 of Appendix 5A to demonstrate that the material is not RACS.
- e. Dispose of RACS in accordance with Section 5.5.8.

(3) Work practice requirements applicable to management of RACS using mechanical methods:

- a. For surface occurrence of RACS - Wet and remove all RACS and a minimum of six (6) inches of soil, and/or other matrix material, in all directions from the last occurrence of visible ACM, with CABI confirmation that the visible extent of RACS has been removed.
- b. For subsurface occurrence of RACS - Wet and remove all RACS and a minimum of three (3) linear feet of soil or other matrix material, in the direction(s) of planned excavation, with CABI confirmation that the visible extent of RACS has been removed. If there is no documented evidence of non-visible RACS at the site, then a visual inspection and clearance shall be sufficient to determine the removal of RACS. If there is documented evidence of non-visible RACS at the site, sampling is required to confirm the removal of RACS. After the removal of the additional three (3) linear feet, and in the absence of any debris, a QPM may make the determination that RACS has been removed.
- c. If RACS remains in the RWA, it shall be managed for stabilization, per 5.5.7(K), or future removal.
- d. In lieu of stabilization or full removal, sampling may be performed per Appendix 5A to demonstrate that the material is not RACS.
- e. Package and dispose of RACS in accordance with Section 5.5.8.

(4) Soil or other matrix material that remains after removal of RACS in accordance with Section 5.5.7(F), Section 5.5.7(H)(1)(c)(i), or an approved plan, is not considered RACS, is not subject to Section 5.5, and may be appropriate for unrestricted use, onsite or offsite, as long as it does not contain any other regulated material.



## (G)LOADING AND PLACEMENT OF RACS

### (1) Requirements for the loading of RACS:

- (a) Protect clean surfaces (including loading surface and truck or disposal container surfaces that may come in contact with RACS) by covering or decontamination of surfaces prior to transport or removal of the truck or disposal container from the RWA and/or loading zone.
- (b) Spill prevention shall consist of:
  - i. Minimization of spillage by not overfilling the excavator or loader bucket and returning the bucket to a closed position prior to moving from the loading point; and
  - ii. Replacement of protective coverings when worn or damaged in order to prevent breaches; and
  - iii. Control of runoff in order to prevent cross contamination from water containing asbestos; and
  - iv. Mitigation of spills of RACS in accordance with Section 5.5.7(J).
- (c) During the process of loading the container, the equipment operator shall lower the bucket as close as possible to the interior of the container before dumping, and dump the load slowly to allow adequate misting and in order to prevent visible emissions from leaving the RWA, or demonstrate that asbestos is not leaving the RWA above risk based thresholds.

### (2) Requirements for the transportation of RACS:

- (a) Onsite transportation of RACS between the RWA and an onsite area of staging, stockpiling, storage, disposal or reuse shall comply with the following:
  - i. The packaging requirements for RACS set forth in Section 5.5.8(A) of these regulations are not applicable; however, the decontamination requirements of Section 5.5.7(I) shall be followed at the end of disposal operations, or before disposal equipment is removed from the site; and
  - ii. Driving speeds shall not exceed 12 miles per hour or RACS shall be covered during transport; and
  - iii. For transportation between the RWA and a non-contiguous onsite staging, stockpiling, storage, disposal, or reuse area:
    - 1. Transportation equipment tires shall not contact RACS; or
    - 2. RACS that is driven upon is a RWA and shall be kept adequately wet in order to prevent visible emissions from leaving the RWA, or demonstrate that asbestos is not leaving the RWA above risk based thresholds, and all equipment surfaces that have come into contact

with RACS shall be decontaminated per Section 5.5.7(I) before leaving the RWA; or

3. The haul road shall be managed as RACS for stabilization, per Section 5.5.7(F)(1), and future removal of a minimum of three (3) inches of soil, or other matrix material. If the road is constructed of a durable surface such as concrete or asphalt, the surface shall be decontaminated in accordance with Section 5.5.7(I)(1)(b) using wet methods, followed by CABI inspection verifying that all soil and debris has been removed from the surface. Rinsate/runoff shall be collected and filtrated to less than 5 microns (or applicable local requirements) and discharged to a sanitary sewer or other Department-approved disposal facility or re-applied to RACS that will be managed under these regulations.

#### (H) ONSITE STAGING, STOCKPILING, AND STORAGE OF RACS

- (1) Staging, as defined in Section 1.2 of these regulations, is the accumulation and temporary storage of RACS in the RWA for 12 hours or less. The following requirements shall apply to the staging of RACS:

- (a) Staged RACS shall be kept adequately wet.

- (b) Staging of RACS shall be on 6 mil, or greater, polyethylene sheeting or shall include removal, and management as RACS, of a minimum of three (3) inches of material, from below the staging pile/area prior to demobilization; with visual or measured confirmation of removal. If polyethylene sheeting is placed on top of a durable surface such as concrete or asphalt, the surface must be decontaminated using wet methods, followed by CABI inspection verifying that all soil and debris has been removed from the surface. Rinsate/runoff shall be collected and filtrated to less than 5 microns (or applicable local requirements) and discharged to a sanitary sewer or other Department-approved disposal facility or re-applied to RACS that will be managed under these regulations.

- (c) Material determined to be clean during generation shall be inspected during placement for staging. Staging of clean material with incidental discovery of RACS shall be managed as follows:

- i. If a CABI was continually inspecting the material during generation, remove the piece of ACM and one (1) foot of material in all directions, with CABI confirmation that the visible extent of RACS has been removed. If more than one (1) piece of ACM, or a pocket of ACM is discovered, remove the pocket of ACM plus one (1) foot of material in all directions, with CABI confirmation that the visible extent of RACS has been removed. Material that remains after removal of RACS, and CABI visible confirmation, is not considered RACS, is not subject to Section 5.5, and

may be appropriate for unrestricted reuse, onsite or offsite, as long as it does not contain any other regulated material.

- ii. If a CABI was not continually inspecting the material during generation, an intrusive inspection of the pile shall be conducted to determine the extent of RACS contamination, followed by the removal of the visible extent of contamination plus removal of one (1) foot of material in all directions. Alternatively, the entire pile, plus three (3) inches of material below the pile, shall be removed and managed as RACS. If the pile was placed on top of a durable surface such as concrete or asphalt, the surface shall be decontaminated using wet methods, followed by CABI inspection verifying that all soil and debris has been removed from the surface. Rinsate/runoff shall be collected and filtrated to less than 5 microns (or applicable local requirements) and discharged to a sanitary sewer or other Department-approved disposal facility or re-applied to RACS that will be managed under these regulations.
- (2) Stockpiling, as defined in Section 1.2 of these regulations, is the accumulation and storage of RACS that will exist for more than twelve (12) hours, up to and including ten (10) calendar days. The following requirements shall apply to stockpiled RACS:
- (a) Stockpiled RACS shall be placed on a minimum of 6 mil polyethylene sheeting or shall include removal, and management as RACS, of a minimum of three (3) inches of soil, or other matrix material, from under the entire area of RACS stockpiling after stockpile removal. If the stockpile was placed on top of a durable surface such as concrete or asphalt, the surface must be decontaminated using wet methods, followed by CABI inspection verifying that all soil and debris has been removed from the surface. Rinsate/runoff shall be collected and filtrated to less than 5 microns (or applicable local requirements) and discharged to a sanitary sewer or other Department-approved disposal facility or re-applied to RACS that will be managed under these regulations.
  - (b) RACS shall be adequately wet during disturbance.
  - (c) Stockpiled RACS shall be controlled per Section 5.5.7(A).
  - (d) Stockpiled RACS shall be stabilized by:
    - i. Polyethylene sheeting or geotechnical fabric with daily inspection, and inspection no later than twelve (12) hours following storm events, and repair/replace sheeting as necessary to maintain stabilization; or
    - ii. Chemical stabilizer demonstrated to be effective in the stabilization of RACS (e.g. magnesium chloride) with weekly inspection, and inspection no later than one (1) calendar day after storm events, and re-application of chemical stabilizer as necessary to maintain stabilization; or

- iii. Minimum of three (3) inches of soil appropriate for unrestricted use.
- (e) For stockpile areas that are non-contiguous with the RWA, transportation of RACS shall be conducted in accordance with the following:
- i. Transportation equipment tires shall not contact RACS; or
  - ii. The tires shall be decontaminated per Section 5.5.7(I) before leaving the RWA; or
  - iii. The haul road shall be managed as RACS for stabilization, per Section 5.5.7(H)(2)(d), and future removal of a minimum of three (3) inches of soil, or other matrix material. If the road is constructed of a durable surface such as concrete or asphalt, the surface shall be decontaminated using wet methods, followed by CABI inspection verifying that all soil and debris has been removed from the surface. Rinsate/runoff shall be collected and filtrated to less than 5 microns (or applicable local requirements) and discharged to a sanitary sewer or other Department-approved disposal facility or re-applied to RACS that will be managed under these regulations.
- (f) For a stockpile that was previously thought to be free of RACS, but where RACS is subsequently identified, the procedure outlined in Section 5.5.7 (H)(1)(c) shall be followed.
- (3) Storage of RACS exceeding ten calendar days shall require the submission of a RACS Storage Plan. Storage of RACS shall not commence prior to approval of the RACS Storage Plan by the Department's Hazardous Materials and Waste Management Division. The RACS Storage Plan shall include:
- (a) Approval of storage with signature from the property owner; and
  - (b) Volume of RACS intended for storage; and
  - (c) Liner design or provisions for removal of a minimum of three (3) inches of underlying material; and
  - (d) Storm water design including protections for run-on and run-off; and
  - (e) Cover design or use of an equivalent durable stabilizer; and
  - (f) Access control and signage; and
  - (g) Storage timeframe (shall not exceed six (6) months unless an extended storage timeframe is approved by the Department and complies with local governing authority requirements); and
  - (h) Inspection and maintenance schedule; and

- (i) Closure and removal requirements; and
  - (j) Documentation and reporting; and
  - (k) Certification of any designed elements by a Colorado registered Professional Engineer.
- (4) Temporary sub-surface storage of RACS in areas of future planned RACS removal shall not exceed six (6) months and shall comply with the following:
- (a) RACS may only be placed within the Area of Contamination (AOC) that it was originally removed from.
  - (b) Placement of RACS utilizing standard RACS management requirements in accordance with the standard requirements of Section 5.5.7, an approved PSRMP, or an approved SOP.
  - (c) Cover RACS in accordance with the requirements of Section 5.5.7(K).
  - (d) RACS not removed within six (6) months (unless an extended storage timeframe is approved by the Department), shall be considered disposal in accordance with Section 5.5.8(A), or reuse within an AOC and will require an environmental covenant in accordance with Section 5.5.8(B)(1).
- (5) Offsite staging, stockpiling, and storage of RACS are allowed as long as they comply with the disposition requirements of Section 5.5.8.

(I) DECONTAMINATION

(1) Requirements applicable to all projects subject to Section 5.5:

(a) Personnel Decontamination:

- i. Remove booties and/or gloves before exiting RWA and dispose as asbestos contaminated waste; or
- ii. If not using disposable PPE, decontaminate boots in a boot wash station, remove gloves after exiting the boot wash station, and dispose of gloves as asbestos contaminated waste. Rinsate from the boot wash station shall be collected, filtrated to less than 5 microns (or applicable local requirements) and discharged to a sanitary sewer or other Department-approved disposal facility, or re-applied to RACS that will be managed under these regulations.

(b) Decontamination of Equipment or Surfaces that have come into Contact with RACS

i. For equipment that comes into contact with RACS:

1. Wet decontamination on a decontamination pad (minimum 10 mil poly or other durable non-permeable barrier) followed by CABI inspection and verification of equipment decontamination before it leaves the decontamination area. All decontamination liquids and solids shall be contained, and run-on and run-off shall be prevented. Rinsate/runoff shall be collected, filtrated to less than 5 microns (or applicable local requirements) and discharged to a sanitary sewer or other Department-approved disposal facility or re-applied to RACS that will be managed under these regulations. For breaches in the decontamination pad where RACS or water contaminated with asbestos may have impacted the material below the decontamination pad, implement the provisions of Section 5.5.7(J);

and/or

2. Decontamination using HEPA vacuums followed by CABI inspection and verification of equipment decontamination before it leaves the decontamination area.

(c) Protection of Clean Equipment and Surfaces:

- i. Keep all equipment off of RACS; or
- ii. Protect clean surfaces from coming in contact with RACS by covering equipment surfaces or RACS surfaces with polyethylene sheeting or equivalent durable impermeable covering. For onsite movement of excavation equipment between RWAs, where only the excavator bucket has come in contact with RACS, the bucket shall be wrapped in polyethylene sheeting (minimum 6 mil) prior to movement. Protective coverings shall be cleaned, repaired, or replaced as necessary. If protective coverings are breached and RACS or asbestos contaminated water comes into contact with underlying material, the provisions of Section 5.5.7(J) shall be followed. Coverings that have come in contact with RACS shall be disposed as asbestos contaminated waste.

(2) Additional Requirements for Projects Disturbing RACS Containing Friable ACM:

- (a) Remove disposable impermeable suits or equivalent coveralls before exiting RWA and dispose as asbestos contaminated waste, or
- (b) After removal of suits or coveralls, conduct full wet decontamination prior to exiting RWA with collection of rinsate and filtration to less than 5 microns and

discharge to a sanitary sewer or other Department-approved disposal facility. Re-application of decontamination shower water is prohibited.

#### (J) RACS SPILL RESPONSE

- (1) Areas where RACS is spilled are RWAs until clean up is completed.
- (2) Spilled material shall be cleaned up immediately and not allowed to dry out or accumulate on any surface. The Department's Hazardous Materials and Waste Management Division shall be notified, through the spill reporting hotline, in the event that spills of RACS cannot be cleaned up within 24 hours of spill identification.
- (3) Where there are breaches in ground coverings that have the potential to allow RACS or water contaminated with asbestos to impact the material below the covering, a minimum of three (3) inches of soil, or other matrix material, shall be removed from beneath the breached ground coverings. Visual or measured (e.g. survey) confirmation that three (3) inches of soil and/or other matrix material from beneath the breached covering has been removed shall be conducted. If ground coverings are placed on top of a durable surface such as concrete or asphalt, the surface shall be decontaminated using wet methods, followed by CABI inspection that all soil and debris has been removed from the surface.
- (4) Rinsate, runoff, or any other water that has come into contact with RACS shall be considered to be asbestos contaminated water and shall be collected and filtrated to less than 5 microns and discharged to a sanitary sewer or other Department-approved disposal facility or re-applied to RACS that will be managed under these regulations.
- (5) Surfaces that are contacted by asbestos contaminated water shall be managed as RACS as per Section 5.5.7(J)(3) or permanently stabilized as per Section 5.5.7(K).
- (6) If work practices in an RWA are causing an ongoing spill outside the RWA, the work practices shall cease or be modified to prevent additional releases.

#### (K) REQUIREMENTS FOR EXPOSED RACS REMAINING IN PLACE

- (1) Any remaining RACS that has been exposed by the soil disturbing activity, but is not disturbed, such as an excavation side-wall or bottom shall be covered or stabilized using one of the following:
  - (a) Cover RACS with geofabric, followed by eighteen (18) inches of fill suitable for unrestricted use, and vegetation; or

- (b) Cover RACS with geofabric, followed by six (6) inches of fill suitable for unrestricted use, and concrete or asphalt; or
- (c) Cover RACS with geofabric, followed by fill suitable for unrestricted use to grade or six (6) inches, whichever is greater, for vertical excavation faces or trenches; or
- (d) Alternate cover designs as approved by the Department.

#### (L) DOCUMENTATION

(1) The documents listed below shall be maintained during a project and available for Department review upon request. However, this documentation need not be submitted to the Department unless requested. CABI and AMS notes may be collected by one individual if they possess both certifications; however, if no AMS is onsite the CABI shall provide items listed in the AMS notes section (e.g. wind monitoring and shutdown events). CABI and AMS notes may be taken by another individual, but shall be reviewed, approved, and signed by the CABI or AMS for whom the notes are being taken. Other appropriate personnel may also provide the following documentation.

(a) CABI/QPM Notes shall include documentation of:

- i. Site description including location; and
- ii. Descriptions of site activities; and
- iii. Descriptions of equipment in use; and
- iv. Descriptions of hand removals (including locations); and
- v. Descriptions of types of debris identified; and
- vi. Descriptions of suspect material identified; and
- vii. Friability of ACM identified (as determined by a CABI); and
- viii. Sampling, if conducted (all sampling shall be conducted by a CABI); and
- ix. Decontamination visual inspection and clearances; and
- x. Excavation visual inspection and clearances; and
- xi. Spill response activities; and
- xii. Observations of visible emissions and responses; and
- xiii. Observations of non-earthen material or the appearance of fill; and
- xiv. Observations of other indicators of impact to soils.

(b) AMS notes shall include documentation of:

- i. Wind speed measurements; and
- ii. Prevailing wind direction(s); and
- iii. Wind shut down event(s); and
- iv. Initial air sample locations; and
- v. Air sample relocation notes; and
- vi. Observations of visible emissions and responses; and



- vii. Notes pertaining to sample malfunctions (pump faults, overloading, etc.); and
- viii. Instances of samples being compromised (samples knocked over, sample filters being sprayed with water, samples physically impacted by equipment, etc.); and
- ix. Air sample data (flow rates, time of sampling, volumes, calibration method, etc.).

(c) General documentation shall include:

- i. Disposal records; and
- ii. Analytical reports including chain of custody forms; and
- iii. Evaluations of any samples with a “cannot be read” analysis result and the notifications of these events to the Department; and
- iv. Location of known remaining RACS; and
- v. Creation and removal dates for, and locations of, staged, stockpiled, and/or stored RACS; and
- vi. Stockpile and staging pile inspection logs and documentation of weather events requiring inspection; and
- vii. Logs of all site personnel with access to the RWA; and
- viii. Certification records for all CABIs and AMSs utilized on the project, and
- ix. Records for training conducted in accordance Sections 5.5.3(A) and 5.5.3(B); and
- x. Records demonstrating the QPM(s) meet the training and experience requirements set forth in Section 5.5.3(C); and
- xi. ECP(s) generated during the project.

#### **5.5.8 PACKAGING AND DISPOSITION OF REGULATED ASBESTOS CONTAMINATED SOIL (RACS)**

(A) Disposal of RACS

- (1) RACS containing one percent (1%) or greater of friable ACM (as determined in the field by a CABI) by volume per load or container, based on visual estimation through continuous visual inspection or other Department-approved quantifiable means of measurement, shall be packaged in a leak tight container and disposed as friable asbestos waste, in accordance with Section 5.3 of these regulations. Alternatively, a friable ACM determination by a CABI is not required if the disposal load is assumed to be RACS containing 1% or greater of friable ACM and is packaged and disposed of in accordance with Section 5.3 of these regulations. Documentation shall accompany each load of RACS removed from the site stating that soil originating from this site shall not be used as daily cover or reused offsite.

(2) For RACS containing:

- (a) Less than one percent (1%) of friable ACM (as determined in the field by a CABI) by volume, per load or container, based on visual estimation through continuous visual inspection, or other Department-approved quantifiable means of measurement, shall be packaged in a leak tight container and disposed in a manner similar to non-friable asbestos waste, as described in Section 5.2 of these regulations. Documentation must accompany each load of RACS removed from the site stating that soil originating from this site shall not be used as daily cover or reused offsite.
- (b) Except as provided by Section 5.5.8(A)(3), only visible non-friable ACM (as determined in the field by a CABI) that has not been rendered friable, or RACS that contains no visible ACM, shall be packaged in a leak tight container and disposed of as non-friable asbestos waste in accordance with Section 5.2 of this Part 5. Documentation shall accompany each load of RACS removed from the site stating that soil originating from this site shall not be used as daily cover or reused offsite.
- (c) A total volume of debris that is less than 1% of the disposal load, based on visual estimation through continuous visual inspection, and the debris is all assumed to be RACS, then a CABI is not required to make a friable ACM determination.

(3) Owners/operators may utilize alternative packaging for RACS, that contains only non-friable ACM and/or asbestos fibers in soil, that ensures that there are no visible emissions during transport to or from the landfill. The alternative packaging must also be acceptable to the disposal facility accepting the waste. A written notice shall be submitted to the Department at least forty-eight (48) hours prior to the alternative packaging being used. If alternative packaging will be used for material that contains any amount of friable asbestos waste, the alternative packaging shall be in accordance with Section 5.3.5 of the Regulation.

(4) A Design and Operations (D&O) plan shall be submitted to, and approved by, the Department for onsite disposal of RACS outside of the AOC, in accordance with the Colorado Solid Wastes Disposal Sites and Facilities Act (C.R.S. 30-20, Part 1) and these regulations. The packaging requirements set forth above in Section 5.5.8(A)(1-2) are not required for onsite disposal, but the requirements of Section 5.5.5(A)(2)(e) are applicable. An environmental covenant, in accordance with 25-15-320, C.R.S., is required for onsite RACS disposal, and a Certificate of Designation shall be required, in accordance with Section 1.6 of these regulations, unless exempt under Section 1.4.

(B) Onsite reuse of RACS:

- (1) A plan for reuse of RACS within the footprint of the AOC shall be submitted to the Department for review and approval prior to implementation and shall comply with Section 5.5.5(A)(2)(e), and the following cover requirements:
  - (a) Cover RACS with geofabric, followed by eighteen (18) inches of fill suitable for unrestricted use, and vegetation; or
  - (b) Cover RACS with geofabric, followed by six (6) inches of fill suitable for unrestricted use, and concrete or asphalt; or
  - (c) Cover RACS with geofabric, followed by fill suitable for unrestricted use to grade or six (6) inches, whichever is greater, for vertical excavation faces or trenches; and
  - (d) The final grades shall promote surface water run-off and minimize erosion, and shall have slopes no less than 5% (20:1) and no greater than 25% (4:1); or
  - (e) Alternate cover designs as approved by the Department; and
  - (f) An environmental covenant, in accordance with 25-15-320, C.R.S., may be required for onsite reuse of RACS.
- (2) A plan for beneficial reuse of RACS outside the footprint of the AOC, in accordance with Section 8.6, shall be submitted to the Department for review and approval prior to its implementation. The plan shall include provisions for covering RACS and shall comply with the management requirements of Section 5.5.5(A)(2)(e). Additionally, the cover requirements outlined in Section 5.5.7(K) shall be adhered to. An environmental covenant, in accordance with 25-15-320 C.R.S. may be required for beneficial reuse of RACS.

(C) Demonstration of Non-RACS

- (1) Soil or other matrix material initially determined to be RACS may be demonstrated not to be RACS based on visual inspection, removal of all ACM, and sampling and analysis of the remaining material showing no detectable asbestos. Sampling and analysis shall be conducted in accordance with Appendix 5A. If there is no detectable asbestos, this material is no longer subject to Section 5.5 and may be appropriate for unrestricted use, onsite or offsite, as long as it does not contain any other regulated material.

#### **5.5.9 FEES**

The Department shall collect fees, from the owner, operator, or person conducting the soil disturbing activity, based on total documented costs, in accordance with Section 1.7

## **APPENDIX 5A**

### **SAMPLE COLLECTION PROTOCOLS AND ANALYTICAL METHODOLOGIES**

#### **1.0 Purpose**

- (A) The purpose of this appendix is to establish standard sample collection requirements and analytical methods and procedures for use in identifying and quantifying asbestos fibers in air, bulk material, and environmental media such as soil or ash.

#### **2.0 Sample Collection Requirements**

- (A) The following sample collection requirements shall be followed when collecting samples for the purpose of determining the applicability of Section 5.5, and when collecting samples necessary to comply with the requirements of Section 5.5. Remediation plans submitted in accordance with Section 5.5.6 shall include a site specific sampling and analysis plan that incorporates the sample collection methodologies and analytical procedures in this Appendix, or proposes alternatives, and include site specific clearance criteria.

##### 2.1 Bulk Samples

- (A) Bulk samples shall be collected, in a manner sufficient to determine whether the material is asbestos-containing material (ACM) or not ACM, from each type of suspect ACM. Bulk samples shall be collected by a State of Colorado certified Asbestos Building Inspector (CABI). In the absence of bulk sample collection, any suspect ACMs must be assumed to be ACMs.
- (B) Bulk samples shall be collected by homogenous type based on color, pattern, texture, thickness, associated materials, or by other identifying characteristics. Additionally, the quantity and location of a suspect material shall be used to determine the number of bulk samples required to characterize the asbestos content of each homogeneous suspect material. For the purpose of determining that a homogeneous suspect material does not contain asbestos, a minimum of three (3) bulk samples shall be collected from the homogeneous material unless there is insufficient material to constitute three (3) samples. If one of the collected samples of a homogeneous bulk material is determined to be ACM, then the homogeneous material shall be considered ACM.

## 2.2 Soil Samples

- (A) Samples collected to determine asbestos content in soil shall be ten (10) point aliquot composite samples collected from a maximum area of 1,250 square feet (representing 0-6 inches beyond the exposed surface) or a maximum volume of forty (40) cubic yards. Individual aliquots shall be approximately 1/10 of the entire sample volume. At each aliquot location approximately one (1) tablespoon of soil shall be collected. The total volume of the ten (10) aliquots should equal roughly a half cup. The total collected sample volume should be greater than one quarter ( $\frac{1}{4}$ ) cup, but should not exceed one cup. Aliquot locations shall be randomly selected but shall be representative of the entire sample area or volume (to be inclusive of the interior of soil piles in addition to the surface). However, aliquots shall be co-located with any areas where friable ACM was formerly present. All samples collected to determine asbestos content shall be collected by a CABI.
- (B) Sampling for clearance purposes of any exposed horizontal or vertical surface shall have the following additional requirements:
  - 1) The aliquots of a clearance sample shall not be collected until after the RACS, and the required amount of associated material, has been removed.
  - 2) A visual inspection shall be performed and passed (i.e., no visible ACM present) by a CABI prior to the collection of soil samples. Visual inspections shall include the following:
    - a) The area to be cleared shall be designated before the visual inspection; and
    - b) Former locations of friable materials shall be designated; and
    - c) The surface being inspected shall be dry enough to allow identification of suspect ACM; and
    - d) The visual inspection shall be conducted in adequate lighting; and
    - e) The area to be cleared shall be free of visual impediments (e.g. snow cover, plastic sheeting, standing water, etc.); and
    - f) At a minimum, the area to be cleared shall be inspected in at least two (2) perpendicular directions; and
    - g) Single or multiple inspectors may be used to perform a visual inspection and clearance. However, a single inspector shall not visually inspect more than a five (5) foot width with each pass [i.e. for a

clearance area that is 25' x 50' a single inspector would be required to make at least five (5) passes in one direction (25' length) and at least ten (10) passes in the other direction (50' length)]; and

- h) Detailed close examination of the area being cleared is required. The inspector(s) should use limited invasive inspection techniques, such as periodically sifting the surface being cleared and closely inspecting the disturbed area.
- 3) If sidewalls with six (6) inches or greater of vertical height are present, independent ten (10) point aliquot composite samples shall be collected from each of the sidewalls and the floor of the excavation.

### 2.3 Ash Samples

- (A) Ash that contains, or is comingled with, suspect ACM and/or construction and demolition debris shall be considered to be RACS unless the ash is sampled, and analysis demonstrates that the ash is not RACS. Representative samples of each type of ash materials shall be sampled and analyzed in the same manner as soil (including area/volumetric limitations of sampling). Ash samples shall be collected by homogenous strata, location, content of other surrounding material, or other observations indicating heterogeneity of the ash present. All samples collected to determine asbestos content shall be collected by a CABI. In the absence of suspect ACM or construction and demolition debris, and in the absence of documented evidence of non-visible asbestos, ash material may be treated as non-RACS.

### 2.4 Cross Contamination Prevention

- (A) All sample collection equipment shall be decontaminated in a manner sufficient to prevent cross contamination between individual samples or individual composite samples. Decontamination is not required between the collection of aliquots comprising a single composite sample.

### 2.5 Air Samples for Standard RACS Management

- (A) Air samples shall be collected by drawing air through 0.8-micron ( $\mu\text{m}$ ), 25-millimeter (mm), mixed cellulose ester (MCE) filters, using an open-faced cowl extension oriented face down at an angle of 45°. Sample flow rate shall be between 0.5-10 liters per minute depending on the anticipated duration of sampling and the specified detection sensitivity. The air sampling equipment shall be run until the minimum volume required is collected for each sample. However, if the minimum air volume required by the method, and/or to reach

the required analytical sensitivity, being utilized cannot be met, the State of Colorado trained and certified Air Monitoring Specialist (AMS) shall request that the laboratory prepare the sample using an indirect preparation method, for TEM presence/absence analysis. Air samples shall be collected at a height that is representative of the disturbance activity taking place. However, air samples shall be located at a height between three (3) feet above the ground surface but not to exceed twenty (20) feet above the ground surface. Air samples shall be collected by an AMS.

## 2.6 Air Samples for Risk-Based Air Threshold Monitoring

- (A) Air samples shall be collected by an AMS. Air monitoring shall be conducted during each partial or full day of soil management activities using fixed and mobile monitors as follows:
  - 1) A minimum of four (4) samples shall be collected for each regulated work area (RWA).
  - 2) For the purpose of determining the number of samples necessary, each RWA shall be divided into four (4) equal quadrants. A minimum of one (1) sample shall be collected for each quadrant with an adjacent receptor zone.
  - 3) If an RWA is greater than one (1) acre, one (1) additional sample for each quadrant with an adjacent receptor zone shall be collected and analyzed for each additional one quarter ( $\frac{1}{4}$ ) acre in RWA surface area.
  - 4) Samples shall be located along the RWA perimeter, between the RWA and each adjacent receptor zone. Samples shall be placed between the RWA and any fixed adjacent receptor(s). In the absence of fixed adjacent receptors, sample placement shall be at the AMS's discretion.
  - 5) The sample volume shall be the minimum necessary to meet analytical sensitivity.
  - 6) Samples shall be collected by drawing air through 0.8-micron ( $\mu\text{m}$ ), 0.25-millimeter (mm), mixed cellulose ester (MCE) filters, using an open-faced cowl extension oriented face down at an angle of 45°.

## **3.0 Analytical Requirements**

- (A) The following analytical methods shall be used to evaluate the presence of asbestos and/or to determine asbestos content when analyzing samples for the purpose of determining the applicability of Section 5.5, and when analyzing samples collected in accordance with Section 5.5:

### 3.1 Bulk Samples



- (A) Samples of suspect ACM shall be analyzed by polarized light microscopy (PLM), according to United States Environmental Protection Agency (USEPA) Method EPA/600/R-93/116 or equivalent method, to determine if any asbestos fibers are present. If the asbestos content of a sample is estimated to be 1% asbestos or less, but greater than 0%, by a method other than point counting (such as visual estimation), the determination shall be repeated using the point counting technique with PLM. Alternatively, the material may be assumed to be ACM. Analysis shall be conducted by a National Voluntary Laboratory Accreditation Program (NVLAP) accredited laboratory.

### 3.2 Soil Samples and Ash Samples

- (A) Prior to preparation of a soil or ash sample, bulk materials shall be separated from the soil or ash sample for independent analysis. Any bulk materials identified in a soil or ash sample that contain any amount of asbestos shall be reported as independent layers of the whole sample. The samples shall be adequately prepared (crushed and dried) to facilitate stereomicroscopic analysis by the laboratory. The goal of the preparation process should be to produce dried conglomerates of approximately one eighth inch (1/8") to one quarter inch (1/4") size. Rock and/or stone material does not need to be crushed (this process is not intended to be homogenization). Soil and ash samples shall be analyzed by PLM according to USEPA Method EPA/600/R-93/116 to determine if any asbestos fibers are present. Analysis shall be conducted by a National Voluntary Laboratory Accreditation Program (NVLAP) accredited laboratory. During the stereomicroscopic analysis (10X – 50X) of the soil/ash sample the analyst shall sift through the sample at a rate of approximately one (1) tablespoon per minute. At the end of the stereomicroscopic analysis the sample shall be agitated or shaken as a final check for asbestos prior to the preparation of PLM grab mounts. At no time during the stereomicroscopic analysis shall a sub sample be collected. The entire sample shall be analyzed and the results reported. If no asbestos was identified by PLM after the initial stereomicroscopic examination, then three (3) random grab mount preparations shall be analyzed by PLM to determine if the sample is none detected for asbestos content. If any asbestos is found by the laboratory it shall be reported even in the absence of a second detection (i.e. there does not need to be a second detection to qualify a trace level of asbestos in the sample). Quantification of asbestos content shall be based on the entire sample volume, and be reported as such.

### 3.3 Air Samples for Standard RACS Management

- (A) Air samples submitted for Phase Contrast Microscopy (PCM) shall be analyzed according to NIOSH Method 7400 by a laboratory showing successful participation in the American Industrial Hygiene Association (AIHA) Proficiency Analytical Testing (PAT) Program or individual(s) certified through the AIHA Asbestos Analysts Registry (AAR) Program.
- (B) Air samples submitted for Transmission Electron Microscopy (TEM), for which quantification of asbestos is desired, shall be prepared and analyzed according to the standard Asbestos Hazard Emergency Response Act (AHERA) method (AHERA; 40 CFR Part 763, Subpart E, Appendix A). All TEM analysis shall be performed by a NVLAP accredited laboratory. If a presence/absence analysis is desired, the analysis shall be performed using the AHERA method modified in the following manner:
  - 1) A minimum of two (2) preparations shall be prepared and utilized for each sample.
  - 2) Analysis shall be conducted on a minimum of four (4) grid openings or until three (3) or more structures are identified, whichever comes first.
  - 3) Any structure (adhering to the AHERA counting rules) identified during analysis shall be reported.
    - a) Identification of less than three (3) structures shall be reported as present.
    - b) Identification of three (3) or greater structures shall be reported as detected.
- (C) Any air sample analysis that results in a “cannot be read (CBR)” determination from the analyst, or a “not analyzed (NA) or rejected” due to loose debris or uneven loading, shall be evaluated by the AMS to determine if a cause of the CBR or NA can be ascertained. If it is determined that the CBR is a result of overloading from airborne emissions, then the AMS shall request that the laboratory prepare the sample, using an indirect preparation method, for TEM presence/absence analysis.

#### 3.4 Risk-Based Air Threshold Samples

(A) Air samples collected for TEM analysis shall be submitted to a NVLAP accredited laboratory. Samples shall be analyzed by TEM according to ISO Method 10312 with the following modifications for PCM equivalent (PCMe) structures:

- 1) An aspect ratio of 3:1 shall be used when counting structures greater than 5 µm in length, rather than the 5:1 ratio specified in the method.
- 2) A width range of 0.25 to 3 µm will be used when counting PCMe structures, rather than the 0.2 to 3 µm specified in the method.
- 3) A minimum of ten grid openings will be counted, rather than the minimum of four (4) grid openings specified in the method.
- 4) Calculations shall be made based on total fibers rather than primary fibers.

(B) The maximum number of grid openings (GOs) to be counted to achieve the specified analytical sensitivity shall be estimated as follows:

$$\text{Number of GOs} = \text{EFA} \div (\text{A}_{\text{GO}} \times \text{V} \times \text{S} \times \text{CF})$$

where:

EFA = effective filter area (385 for a 25-mm filter)

A<sub>GO</sub> = area of a grid opening (approximately 0.01 mm<sup>2</sup>; actual value to be provided by the analytical laboratory)

V = volume of air sampled (in liters [L])

S = analytical sensitivity (structures per cubic centimeter [s/cc])

CF = conversion factor (1000 cc/L)

(C) Any air sample analysis that results in a “cannot be read (CBR)” determination from the analyst, or a “not analyzed (NA) or rejected” due to loose debris or uneven loading, shall be prepared by the laboratory, using an indirect preparation method, for TEM presence/absence analysis.

### 3.5 Data Evaluation for Risk-Based Air Threshold Samples

(A) General requirements:

- 1) Samples collected for comparison to risk-based air thresholds shall be evaluated based on the average (mean) concentration over the exposure duration.
- 2) All valid data shall be used to calculate daily and ten (10) day rolling averages.

- 3) For all projects a minimum of three (3) samples per day must have quantifiable data (not CBR or rejected). If less than three (3) quantifiable analytical results are available then the daily average is invalid.

(B) Project days 1-9:

- 1) The results of the daily samples must be averaged to calculate a daily average for use in comparing to the risk based air threshold for days 1-9 of monitoring.
- 2) A ten (10) day average shall be calculated for days 1-9. The ten (10) day average shall be comprised of at least eight (8) valid daily average results. However, all valid data shall be used to calculate the ten (10) day average.
- 3) If the ten (10) day average exceeds the risk-based air threshold, engineering controls shall be adjusted to reduce the daily average.
- 4) The Department shall be notified within 24 hours if the calculations in paragraphs 1 and 2 above cannot be completed due to invalid data.

(C) Project days 10 and greater:

- 1) Starting on day 10, a ten (10) day rolling average shall be calculated and compared to the risk-based threshold.
- 2) If average concentration trends indicate the risk-based air threshold will be exceeded before project completion, engineering controls shall be adjusted to reduce the daily asbestos emissions.
- 3) If subsequent evaluation of average concentration trends indicates that the risk-based air threshold will still be exceeded before project completion, additional adjustments to engineering controls shall be made.
- 4) If changes in engineering controls are not effective in reducing airborne concentration trends such that the risk-based air thresholds can be met, consultation with the Department is required.
- 5) The Department shall be notified within five (5) working days if the averaged airborne asbestos concentration for the entire project exceeds the risk-based air threshold.

## **4.0 Documentation**

(A) All of the following sampling and analytical documentation shall be maintained during a project and available for Department review upon request. This documentation need not be submitted to CDPHE unless requested or as required in a project specific plan.

1) Documentation of bulk, soil, and ash samples shall include:

- a. A description of the material being sampled including friability.
  - i. For samples collected for characterization purposes also include an estimate of the quantity of visible suspected RACS present.
  - ii. For samples of ash, also include a brief description of the ash layer, and any associated identifiable debris.
- b. Name of person collecting the sample(s).
- c. Date and time of sample collection.
- d. Location of sample collection (a map, drawing, or diagram showing sample locations in relation to the work area and surrounding area).
- e. The boundary/limits that are represented by the collected sample.
- f. Chain of custody documentation.
- g. Laboratory analysis reports.
- h. Log of characterized homogeneous bulk materials including material descriptions, photographic documentation, and asbestos content.

2) Documentation of air samples shall include:

- a. Name of person collecting the sample(s).
- b. Date and time(s) of sample collection.
- c. Locations of air sample collection.
- d. Any relocation of air samples.
- e. A map, drawing, or diagram showing air sample locations (initial and relocations) in relation to the work area and the surrounding area.
- f. Chain of custody documentation.
- g. Laboratory analysis reports.
- h. Explanation of any air sample malfunctions and any voided air samples.
- i. Risk based air threshold concentration calculations.
- j. Air sample data (flow rates, time of sampling, volumes, calibration method, etc.).
- k. Wind speed measurements.

- l. Prevailing wind directions.
- m. Wind shut down events.
- n. Observations of visible emissions and responses.

## **5.0 Deviations from Sampling and Analysis Procedures**

(A) Deviation from this sampling and analysis appendix shall only be allowed upon consultation with, review by, and approval from, the Department.

**John W. Suthers**

Attorney General

**Cynthia H. Coffman**

Chief Deputy Attorney General

**Daniel D. Domenico**

Solicitor General



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**State of Colorado  
Department of Law**

**Office of the Attorney General**

Tracking number: 2014-00479

**Opinion of the Attorney General rendered in connection with the rules adopted by the  
Hazardous Materials and Waste Management Division**

**on 08/19/2014**

6 CCR 1007-2 Part 1

**SOLID WASTE DISPOSAL SITES AND FACILITIES**

The above-referenced rules were submitted to this office on 08/20/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

August 26, 2014 16:22:47

A handwritten signature in black ink, appearing to read "JWS", is written over a light blue rectangular background.

**John W. Suthers**

Attorney General

by Daniel D. Domenico

Solicitor General

## **Permanent Rules Adopted**

### **Department**

Department of Public Health and Environment

### **Agency**

Hazardous Materials and Waste Management Division

### **CCR number**

6 CCR 1007-2 Part 1

### **Rule title**

6 CCR 1007-2 Part 1 SOLID WASTE DISPOSAL SITES AND FACILITIES 1 - eff  
09/30/2014

### **Effective date**

09/30/2014



# **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**

#### **PART A GENERAL REQUIREMENTS AND INFORMATION CONCERNING ALL SOLID WASTE DISPOSAL SITES AND FACILITIES IN THE STATE OF COLORADO**

#### **SECTION 1 ADMINISTRATIVE INFORMATION**

#### **1.7 SOLID WASTE AUTHORIZATION AND FEES**

**(Adopted by the Solid and Hazardous Waste Commission on August 19, 2014)**

#### **Addition of Section 1.7.6 (Waste Tire Fee)**

#### **1) Add Section 1.7.6 (Waste Tire Fee) to read as follows:**

##### **1.7.6 Waste Tire Fee**

Retailers must collect a fee of \$1.50 on the sale of each new motor vehicle tire and new trailer tire. Retailers must submit to the Department all fees collected from the sale of each new motor vehicle tire and new trailer tire. The fees collected each month are due to the Department no later than the 20th day of the following month.

**John W. Suthers**

Attorney General

**Cynthia H. Coffman**

Chief Deputy Attorney General

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**State of Colorado  
Department of Law  
Office of the Attorney General**

Tracking number: 2014-00682

**Opinion of the Attorney General rendered in connection with the rules adopted by the  
Hazardous Materials and Waste Management Division**

**on 08/19/2014**

6 CCR 1007-2 Part 1

**SOLID WASTE DISPOSAL SITES AND FACILITIES**

The above-referenced rules were submitted to this office on 08/20/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

A handwritten signature in black ink, appearing to read "JWS", is written over a light gray rectangular background.

**John W. Suthers**

Attorney General

by Daniel D. Domenico

Solicitor General

August 26, 2014 16:21:56

## **Permanent Rules Adopted**

### **Department**

Department of Human Services

### **Agency**

Income Maintenance (Volume 3)

### **CCR number**

9 CCR 2503-5

### **Rule title**

9 CCR 2503-5 ADULT FINANCIAL PROGRAMS 1 - eff 10/01/2014

### **Effective date**

10/01/2014

Tracking# 2014-00601  
Final (permanent) 8/8/14, eff. 10/1/14

(Former TN# 2014-00695)  
Emergency adoption 7/11/14, eff. 7/11/14

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## (9 CCR 2503-1)

[Note: the Statement of Basis and Purpose has been incorporated with TN# 2014-00628 (Rule-Making# 14-5-28-1).]

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## (9 CCR 2503-5)

[Instructions: replace the section title below.]

### **3.520.4 APPLICATION PROCESSING [Rev. eff. 8/1/14]**

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[Instructions: replace item "D", inclusive, below.]

- 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.

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## (9 CCR 2503-6)

[Instructions: replace the section title below.]

### **3.602.1 Applications [Rev. eff. 8/1/14]**

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[Instructions: replace item "E", inclusive, below.]

#### **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.
- 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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**John W. Suthers**

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**State of Colorado**

**Department of Law**

**Office of the Attorney General**

Tracking number: 2014-00601

**Opinion of the Attorney General rendered in connection with the rules adopted by the  
State Board of Human Services: #14-5-30-1 Restricted Use of EBT for CO Works and Adult Financial**

**on 08/08/2014**

**9 CCR 2503-5**

**ADULT FINANCIAL PROGRAMS**

The above-referenced rules were submitted to this office on 08/13/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

A handwritten signature in black ink, appearing to read "JWS", is written over a light blue rectangular background.

**John W. Suthers**

Attorney General

by Daniel D. Domenico

Solicitor General

August 22, 2014 16:22:26



## **Permanent Rules Adopted**

### **Department**

Department of Human Services

### **Agency**

Income Maintenance (Volume 3)

### **CCR number**

9 CCR 2503-5

### **Rule title**

9 CCR 2503-5 ADULT FINANCIAL PROGRAMS 1 - eff 10/01/2014

### **Effective date**

10/01/2014

Tracking# 2014-00628  
Final (permanent) 8/8/14, eff. 10/1/14

(Former TN# 2014-00693)  
Emergency adoption 7/11/14, eff. 8/6/14

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## (9 CCR 2503-1)

[Instructions: insert both of the following paragraphs at the end of the Statement of Basis and Purpose section.]

Revisions to Sections 3.520.4, 3.540, 3.581 (9 CCR 2503-5) and 3.602 (9 CCR 2503-6) were final (permanent) adoption of prior emergency rules at the 8/8/2014 State Board meeting (Rule-making# 14-5-28-1, 14-5-29-1, and 14-5-30-1), with an effective date of 10/1/2014. 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 Enterprise Partnerships, State Board Administration.

Revisions to Section 3.905 (9 CCR 2503-9) were adopted as final at the 8/8/2014 State Board meeting (Rule-making# 14-4-29-1), with an effective date of 10/1/2014. 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 Enterprise Partnerships, State Board Administration.

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## (9 CCR 2503-5)

[Instructions: replace the following (the remainder of the section stays the same)]

### **3.540 AID TO THE NEEDY DISABLED (AND) PROGRAM [Rev. eff. 10/1/14]**

The Aid to the Needy Disabled State Only (AND-SO) program provides interim assistance to clients age eighteen (18) through fifty-nine (59) years of age (unless diagnosed with blindness, then age zero (0) through 59 years of age); who are disabled or blind but have not been approved for Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI). The AND-Colorado Supplement (AND-CS) program provides a supplemental payment for client's age zero (0) to 59 who are receiving SSI due to a disability or blindness, but are not receiving the full SSI grant standard.

A. The total AND-SO grant standard is \$189.00, effective August 6, 2014.

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**John W. Suthers**

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**State of Colorado  
Department of Law**

**Office of the Attorney General**

Tracking number: 2014-00628

**Opinion of the Attorney General rendered in connection with the rules adopted by the  
State Board of Human Services: #14-5-28-1 AND Grant Increase and Changes to SSI Per SB 14-012**

**on 08/08/2014**

**9 CCR 2503-5**

**ADULT FINANCIAL PROGRAMS**

The above-referenced rules were submitted to this office on 08/13/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

August 22, 2014 16:21:49

**John W. Suthers**

Attorney General

by Daniel D. Domenico

Solicitor General

## **Permanent Rules Adopted**

### **Department**

Department of Human Services

### **Agency**

Income Maintenance (Volume 3)

### **CCR number**

9 CCR 2503-5

### **Rule title**

9 CCR 2503-5 ADULT FINANCIAL PROGRAMS 1 - eff 10/01/2014

### **Effective date**

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(Former TN# 2014-00580)  
Emergency adoption 6/6/14, eff. 6/6/14

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## (9 CCR 2503-1)

[Note: Statement of Basis and Purpose has been incorporated with Tracking# 2014-00628 (Rule-Making# 14-5-28-1).]

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## (9 CCR 2503-5)

[Instructions: replace lines as follows.]

### **3.581 PURPOSE OF PROGRAM [Rev. eff. 10/1/14]**

- A. The AFC program provides twenty-four (24) hour care and supervision for frail elderly or physically or emotionally disabled adults, age eighteen (18) or older, who do not require twenty-four (24) hour medical care but who cannot return to their home and need twenty-four (24) hour non-medical supervision.
- B. Effective January 1, 2014, the maximum AFC grant standard is \$1,353.00, determined as follows:
  - 1. Deduct the client's income, from the AFC grant standard; and,
  - 2. Deduct the client's OAP or AND-CS grant and any Supplemental Security Income (SSI) benefits; and,
  - 3. The remainder is the AFC benefit.
- C. The AFC maximum grant standard shall be adjusted to stay within available appropriations. Appeals shall not be granted for these adjustments.
- D. The AFC grant is not taxable income to the client.
- E. In addition to the regular monthly AFC grant payments, supplemental payments necessary to comply with the federal Maintenance of Effort (MOE) requirements may be provided. These payments are supplements to regular grant payments, are not entitlements, and do not affect grant standards. Appeals shall not be allowed for MOE payment adjustments.

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**John W. Suthers**

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**State of Colorado  
Department of Law**

**Office of the Attorney General**

Tracking number: 2014-00600

**Opinion of the Attorney General rendered in connection with the rules adopted by the  
State Board of Human Services: #14-5-29-1 AFC COLA Increase for 2014**

**on 08/08/2014**

**9 CCR 2503-5**

**ADULT FINANCIAL PROGRAMS**

The above-referenced rules were submitted to this office on 08/13/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

August 22, 2014 16:22:06

A handwritten signature in black ink, appearing to read "JWS", is written over a light blue rectangular background.

**John W. Suthers**

Attorney General

by Daniel D. Domenico

Solicitor General

## **Permanent Rules Adopted**

### **Department**

Department of Human Services

### **Agency**

Income Maintenance (Volume 3)

### **CCR number**

9 CCR 2503-9

### **Rule title**

9 CCR 2503-9 COLORADO CHILD CARE ASSISTANCE PROGRAM 1 - eff  
10/01/2014

### **Effective date**

10/01/2014

Tracking# 2014-00603  
FA/P 8/8/14, eff. 10/1/14

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## (9 CCR 2503-1)

[Note: the Statement of Basis and Purpose has been incorporated with TN# 2014-00628 (Rule-Making# 14-5-28-1).]

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## (9 CCR 2503-9)

[Instructions: replace the following title.]

### **3.905 ARRANGEMENT FOR CHILD CARE SERVICES [Rev. eff. 10/1/14]**

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[Instructions: replace the following in Item B, 10.]

10. Current Monthly Federal Poverty Guidelines and State Median Income for State Fiscal Year 2015 is as follows:

<b>Family Size</b>	<b>100% Federal Poverty Guideline (FPG) FFY <u>2014</u></b>	<b>130% Federal Poverty Guideline (FPG) FFY <u>2014</u> (State Minimum Income Limit)</b>	<b>85% State Median Income (SMI) FFY 2015 (State and Federal Maximum Income Limit)</b>	
<b>2</b>	\$1311	\$1704	\$4067	
<b>3</b>	\$1649	\$2144	\$5024	
<b>4</b>	\$1988	\$2584	\$5981	
<b>5</b>	\$2326	\$3024	\$6937	
<b>6</b>	\$2664	\$3463	\$7894	
<b>7</b>	\$3003	\$3903	\$8253	
<b>8</b>	\$3341	\$4343	\$8612	
<b>9</b>	\$3638	\$4729	\$8971	
<b>Each Additional person</b>	\$338	\$440	See Below*	

To calculate the State Median Income for each additional family member above nine persons, add three (3) percentage points to the percentage for a six-person family (132%) and multiply the new percentage by the state's estimated median income for a four-person family.

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**State of Colorado  
Department of Law**

**Office of the Attorney General**

Tracking number: 2014-00603

**Opinion of the Attorney General rendered in connection with the rules adopted by the  
State Board of Human Services: #14-4-29-1 CCCAP Federal Poverty Guideline Update**

**on 08/08/2014**

**9 CCR 2503-9**

**COLORADO CHILD CARE ASSISTANCE PROGRAM**

The above-referenced rules were submitted to this office on 08/12/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

August 22, 2014 16:21:24

A handwritten signature in black ink, appearing to read "JWS", is written over a light blue rectangular background.

**John W. Suthers**

Attorney General

by Daniel D. Domenico

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 10/01/2014

### **Effective date**

10/01/2014

**SECRETARY OF STATE  
RULES ACTION SUMMARY AND FILING INSTRUCTIONS**

**SUMMARY OF ACTION ON RULE(S)**

1. Department / Agency Name: Health Care Policy and Financing / Medical Services Board
2. Title of Rule: MSB 14-04-24-A, MSB 14-04-24-A Revision to the Medical Assistance Rule Concerning Reasonable Opportunity Period for Citizens and Non-Citizens, Section 8.100.3.G and 8.100.3.H.
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) 8.100.3.G and 8.100.3.H, 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\***

Insert new subsection text beginning at §8.100.3.G.2 through the end of the table at of §8.100.3.G.3.d. Replace current text beginning at §8.100.3.H.9.a through the end of the table at §8.100.H.9.c. All text indicated in blue is for clarification only and should not be changed. This revision is effective 10/01/2014.

Title of Rule: MSB 14-04-24-A Revision to the Medical Assistance Rule Concerning Reasonable Opportunity Period for Citizens and Non-Citizens, Section 8.100.3.G and 8.100.3.H.

Rule Number: MSB 14-04-24-A

Division / Contact / Phone: Eligibility Division / Geoffrey Oliver / 303-866-2686

## **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 proposed rule changes amend 10 CCR 2505-10, Section 8.100.3.G and 8.100.3.H, to reflect changes to Reasonable Opportunity Period for citizens and national, and incorporate the ROP into the eligibility determination process for non-citizens.

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 1902(ee)(1)(B)(ii)(II), and Section 1137(d)(4)(A)(i) of the Social Security Act. Title 42 Code of Federal Regulations Section 435.949

4. State Authority for the Rule:

25.5-1-301 through 25.5-1-303, C.R.S. (2013);  
25.5-4-105.

Initial Review **07/11/2014**

Final Adoption

**08/08/2014**

Proposed Effective Date **10/01/2014**

Emergency Adoption

Title of Rule: MSB 14-04-24-A Revision to the Medical Assistance Rule Concerning Reasonable Opportunity Period for Citizens and Non-Citizens, Section 8.100.3.G and 8.100.3.H.

Rule Number: MSB 14-04-24-A

Division / Contact / Phone: Eligibility Division / Geoffrey Oliver / 303-866-2686

## **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 extends the Reasonable Opportunity Period (ROP) for citizens and nationals applying for MAGI programs from 14 calendar days to 90 calendar days, and for citizens and nationals applying for Adult Programs from 70 calendar days to 90 calendar days to provide the necessary citizenship and identity documentation. It also incorporates a ROP of 90 calendar days for non-citizens applying for Medicaid to provide satisfactory documentation of evidence of qualified alien status. These changes will benefit applicants to Medicaid programs by giving them a longer period to produce the necessary documents needed to make a final determination on eligibility.

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 increase the time limit for applicants to produce the necessary documents needed to make a final determination for Medicaid eligibility.

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.

The proposed change is expected to have a financial impact because it will extend the ROP for applicant and recipients who qualify for ROP. The estimated impact over a full Fiscal Year is \$151,584.

4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

The Department is implementing the proposed rule in order to be in compliance with sections 1902 and 1137 of the Social Security Act. Inaction in the implementation of the rule could lead to possible withholding of federal match.

5. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

There is no alternative action that is less costly or less intrusive. Extension of the Reasonable Opportunity Period is required under the Social Security Act.

6. Describe any alternative methods for achieving the purpose for the proposed rule that were seriously considered by the Department and the reasons why they were rejected in favor of the proposed rule.

There are no alternative methods for the proposed rule that were considered.

### 8.100.3.G. General and Citizenship Eligibility Requirements

2. For determinations of eligibility for Medical Assistance, legal immigration status must be verified. This requirement applies to a non-citizen individual who meets the criteria of any category defined at 8.100.3.G(1)(g)(ii) or (iii) and has declared that he or she has a legal immigration status.

- a. An electronic interface with a federally-approved electronic data source will be used to verify legal immigration status.
- b. The Verify Lawful Presence (VLP) interface is an acceptable interface to verify immigration status. The VLP interface connects to the Department of Homeland Securities Systematic Alien Verification for Entitlements (SAVE) Program. An automated response from VLP confirms that the data submitted is consistent with VLP data for immigration status verification requirements. No further action is required for the individual and no additional documentation of immigration status is required.

#### 3. Reasonable Opportunity Period

- a. If the verification through the electronic interface is unsuccessful then the applicant will be provided a reasonable opportunity period to submit documents indicating a legal immigration status. The reasonable opportunity period will begin as of the date of the notice of action. The required documentation must be received within the reasonable opportunity period.
- b. If the applicant does not provide the necessary documents within the reasonable opportunity period, then the applicant's Medical Assistance application shall be terminated.
- c. The reasonable opportunity period is 90 calendar days and applies to MAGI Programs for persons covered pursuant to 8.100.4.G or 8.100.4.I. For the purpose of this section only, MAGI Programs include the following:

Commonly Used Program Name	Rule Citation
Parent and Caretaker Relative Medical Assistance	8.100.4.G.3
Transitional Medical Assistance	8.100.4.I.1-5
Children's Medical Assistance	8.100.4.G.2
Pregnant Women Medical Assistance	8.100.4.G.5
Legal Immigrant Prenatal Medical Assistance	8.100.4.G.6
Adult Medical Assistance	8.100.4.G.4

- d. The reasonable opportunity period is 90 calendar days; and applies to Adult Programs for persons covered pursuant to 8.100.3.F, 8.100.6.P, 8.100.6.Q, or 8.715. For the purpose of this section only, Adult Programs include the following:

Commonly Used Program Name	Rule Citation
Old Age Pension A (OAP-A)	8.100.3.F.1.c
Old Age Pension B (OAP-B)	8.100.3.F.1.c
Qualified Disabled Widow/Widower	8.100.3.F.1.e
Pickle	8.100.3.F.1.e
Long-Term Care	8.100.3.F.1.f-h
Breast and Cervical Cancer Program (BCCP)	8.715
Medicaid Buy-In Program for Working Adults with Disabilities	8.100.6.P
Medicaid Buy-In Program for Children with Disabilities	8.100.6.Q



### 8.100.3.H. Citizenship and Identity Documentation Requirements

#### 9. Reasonable Opportunity Period

- a. If a Medical Assistance applicant does not have the required documentation, he or she must be given a reasonable opportunity period to provide the required documentation. The reasonable opportunity period will begin as of the date of the notice of action. The required documentation must be received within the reasonable opportunity period. If the applicant does not provide the required documentation within the reasonable opportunity period, then the applicant's Medical Assistance benefits shall be terminated.
- b. The reasonable opportunity period is 90 calendar days; and applies to MAGI Programs for persons covered pursuant to 8.100.4.G or 8.100.4.I. For the purpose of this section only, MAGI Programs include the following:

<u>Commonly Used Program Name</u>	<u>Rule Citation</u>
Parent and Caretaker Relative Medical Assistance	8.100.4.G.3
Transitional Medical Assistance	8.100.4.I.1-5
Children's Medical Assistance	8.100.4.G.2
Pregnant Women Medical Assistance	8.100.4.G.5
Adult Medical Assistance	8.100.4.G.4

- c. The reasonable opportunity period is 90 calendar days; and applies to Adult Programs for persons covered pursuant to 8.100.3.F, 8.100.6.P, 8.100.6.Q, or 8.715. For the purpose of this section only, Adult Programs include the following:

<u>Commonly Used Program Name</u>	<u>Rule Citation</u>
Old Age Pension A (OAP-A)	8.100.3.F.1.c
Old Age Pension B (OAP-B)	8.100.3.F.1.c
Qualified Disabled Widow/Widower	8.100.3.F.1.e
Pickle	8.100.3.F.1.e
Long-Term Care	8.100.3.F.1.f-h
Breast and Cervical Cancer Program (BCCP)	8.715
Medicaid Buy-In Program for Working Adults with Disabilities	8.100.6.P

## 10. Good Faith Effort

- a. In some cases, a Medical Assistance client or applicant may not be able to obtain the required documentation within the applicable reasonable opportunity period. If the client or applicant is making a good faith effort to obtain the required documentation, then the reasonable opportunity period should be extended. The amount of time given should be determined on a case-by-case basis and should be based on the amount of time the individual needs to obtain the required documentation.

Examples of good faith effort include, but are not limited to:

- i) Providing verbal or written statements describing the individual's effort at obtaining the required documentation;
- ii) Providing copies of emails, letters, applications, checks, receipts, or other materials sent or received in connection with a request for documentation; or
- iii) Providing verbal or written statements of the individuals' efforts at identifying people who could attest to the individual's citizenship or identity, if citizenship and/or identity are included in missing documentation.

An individual's verbal statement describing his or her efforts at securing the required documentation should be accepted without further verification unless the accuracy or truthfulness of the statement is questionable. The individual's good faith efforts should be documented in the case file and are subject to all record retention requirements.

**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 14-03-05-B, Revision to the Medical Assistance Rule Concerning the Limitation to Medicaid Estate Recovery, Section 8.063
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) 8.063, 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 §8.063.11 through the end of §8.063.12 with the new text provided. Delete the text at §8.063.20. All text indicated in blue is for clarification only and should not be changed. This revision is effective 10/01/2014.

Title of Rule: Revision to the Medical Assistance Rule Concerning the Limitation to Medicaid Estate Recovery, Section 8.063

Rule Number: MSB 14-03-05-B

Division / Contact / Phone: Legal Division / David L. Smith / 303-866-3247

## **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 this rule amendment is to remove the Department's ability to make recoveries under its estate recovery program that are optional under federal law. The amendment reflects the various recoveries that the Department is required to make under its program. This change is necessary to encourage newly eligible individuals under the Affordable Care Act to apply for Medicaid who might perceive estate recovery as a reason not to apply.

Reports in the media suggested that individuals coming to Medicaid for the first time through the exchanges created in response to the Affordable Care Act might be reluctant to apply because of Medicaid estate recovery programs. Colorado's program had implemented the optional provisions of federal law by permitting estate recoveries for any medical assistance services for clients over the age of 55. The rule amendment removes the optional recoveries and limits Colorado's estate recovery rights to those items required by federal law.

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 U.S.C.A. § 1396p (2014)

4. State Authority for the Rule:

Initial Review

**07/11/2014**

Final Adoption

**08/08/2014**

Proposed Effective Date

**10/01/2014**

Emergency Adoption

25.5-1-301 through 25.5-1-303, C.R.S. (2013);  
25.5-4-302, C.R.S. (2013)

Initial Review

**07/11/2014**

Final Adoption

**08/08/2014**

Proposed Effective Date

**10/01/2014**

Emergency Adoption

Title of Rule: Revision to the Medical Assistance Rule Concerning the Limitation to Medicaid Estate Recovery, Section 8.063

Rule Number: MSB 14-03-05-B

Division / Contact / Phone: Legal Division / David L. Smith / 303-866-3247

## **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 limits the items subject to estate recoveries on clients who were 55 years of age or older at the time they received medical assistance. Previously the Department would seek to recover any items or services under the State Plan. This amendment will limit the Department to recoveries for nursing facility services, home and community-based services, and related hospital and prescription drug services for clients 55 years of age or older.

2. To the extent practicable, describe the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

In calendar year 2013, the Department's estate recovery vendor recovered \$424,648.95 on 39 estate recovery cases that had no long term care or home and community based services claims. This figure represents recoveries on clients age 55 and older that were not institutionalized. The impact of the proposed amendment upon the affected class of clients is that the estates of these clients will not be subject to repayment of these medical assistance costs. Rather, the monies will be distributed to individuals' heirs in accordance with the probate code.

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.

As noted above, the estate recovery program recovered \$424,648.95 in calendar year 2013 on medical assistance claims other than long term care services. In absence of these recoveries the Department will be required to draw these funds from the State's general fund and from the federal government.

4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

The benefit of inaction would be that the State would continue to recover these medical assistance payments from the estates of individuals age 55 or older. The benefit of proposed amendment to the rule potentially will be greater enrollment in Medicaid. The public might not perceive Colorado's estate recovery program as a disincentive to apply for Medicaid.

5. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

The proposed amendment benefits the estates of the group of Medicaid clients age 55 or older by removing the optional recoveries described in 42 U.S.C.A. § 1396p(b)(1)(B)(ii). The proposed amendment retains the required categories of services that must be recovered. We believe any less intrusive options would not further the policy goal.

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 determined that the elimination of the optional estate recoveries was the most effective means of achieving the purpose of ensuring that individuals would not be deterred from applying for Medicaid.

### 8.063 MEDICAL ASSISTANCE ESTATE RECOVERY

- .11 The state department may seek to recover medical assistance expenditures correctly paid from the estates of deceased individuals as follows:
- A. Recoveries of payments are made for all medical assistance paid on behalf of an individual who was institutionalized at the time he/she received medical assistance.
  - B. Recoveries of payments are made for nursing facility services, home and community-based services, and related hospital and prescription drug services paid on behalf of an individual who was 55 years of age or older at the time he/she received medical assistance. The state department does not make the optional recoveries described under federal law in 42 U.S.C. § 1396p(b)(1)(B)(ii) in the case of an individual described in this subsection.
- .12 The state department may limit estate recovery to recoveries that are cost-effective. The term "cost effective" means that the amount of medical assistance expenditures likely to be recovered is greater than the likely cost to the state of the recovery.
- .13 The state department may file a lien on the real property of an institutionalized person for the amount of medical assistance correctly paid on behalf of the person, only if:
- A. the department determines that the medical assistance recipient cannot reasonably be expected to be discharged from the institution and to return home; and
  - B. there is no spouse of the recipient lawfully residing in the home; and
  - C. there is no child of the recipient under age 21 or blind or disabled dependent of the recipient lawfully residing in the home; and
  - D. there is no sibling of the recipient who has an equity interest in the home and who was lawfully residing in the home for at least one year immediately prior to the date the recipient was admitted to the institution; and
  - E. later recovery from the estate is likely to be cost-effective.

Medical assistance payments made on behalf of an institutionalized recipient during the time that all lien criteria are not met will be subject to a lien at such time that all lien criteria are met.

- .14 The state department shall determine whether a medical assistance recipient reasonably can be expected to be discharged from the institution and to return home. This determination shall be made by the Utilization Review Contractor after notice and opportunity for a hearing. The determination that the recipient is not likely to return home will be used to decide if a lien will be filed. This determination will not change an exempt home into a countable resource for eligibility purposes.

The notice to the recipient shall include the following:

- A. A statement of the action that the Utilization Review Contractor intends to take, the reasons for the intended action, and the specific regulations that support the action.
- B. An explanation of the term "lien", and that imposing a lien does not mean that the individual will lose ownership of the home.



- C. A statement that the determination will not result in a loss of eligibility for medical assistance benefits.
- D. The process by which a recipient may request a hearing to appeal the decision of the Utilization Review Contractor.

The decision may be appealed through the procedures in the RECIPIENT APPEALS PROTOCOLS/PROCESS Section of this staff manual.

The state department shall dissolve any lien on a recipient's home if the recipient is discharged from the institution and returns to the home subject to the lien.

- .15 The state department shall not recover medical assistance expenditures correctly paid from the estate of a medical assistance recipient if:
  - A. There is a surviving spouse of the recipient; or
  - B. There is a child of the recipient under age 21 or a blind or disabled dependent of the recipient.
- 8.063.16 In addition to the prohibitions of 8.063.15, the state department shall not recover medical assistance expenditures correctly paid from the sale of the recipient's home, whether or not the home was subject to a lien, if:
  - A. there is a sibling of the recipient who was lawfully residing in the home for at least one year immediately prior to the date the recipient was admitted to the institution and who has continuously lived in the home since that date; or
  - B. there is a son or daughter of the recipient who was lawfully residing in the home for at least two years immediately prior to the date the recipient was admitted to the institution and who has continuously lived in the home since that date, and who provided care to the recipient which permitted the recipient to reside at home rather than in an institution.

If either of the two conditions above exist, the state department may recover medical assistance expenditures correctly paid from assets in the estate other than the sale of the recipient's home.
- .17 The state department shall file liens and recover expenditures for medical assistance provided on or after July 1, 1992.
- .18 The state department may compromise, settle, or waive recovery of medical assistance expenditures if it determines good cause to do so. The department shall determine that good cause exists if:
  - A. it concludes that without receipt of the proceeds of the estate, the heirs would become eligible for assistance payments and/or medical assistance programs; or
  - B. it concludes that allowing the heirs to receive the inheritance from the estate will enable these individuals to discontinue eligibility for assistance payments and/or medical assistance programs; or
  - C. it concludes that the home is part of a business, including a working farm or ranch, and recovery of medical assistance expenditures will result in the heirs to the estate losing their means of livelihood.
- .19 The state department may agree to a payment plan for repayment of any debt owed the state under the Medical Assistance Estate Recovery Program.

**SECRETARY OF STATE  
RULES ACTION SUMMARY AND FILING INSTRUCTIONS**

**SUMMARY OF ACTION ON RULE(S)**

1. Department / Agency Name: Health Care Policy and Financing / Medical Services Board
2. Title of Rule: MSB 14-04-02-B, Revision to the Medical Assistance Rule Concerning Home and Community Based Services Brain Injury Waiver, Section 8.515.85
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) 8.515.85, 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\***

Insert new subsection text provided beginning at §8.515.85 through the end of §8.515.85.N.3 immediately after §8.515.70.E.5 and before §8.517. This revision is effective 10/01/2014.

**OFFICE OF STATE PLANNING AND BUDGETING  
FILING INFORMATION FORM**

Title of Rule: Revision to the Medical Assistance Rule Concerning Home and Community Based Services Brain Injury Waiver, Section 8.515.85

Rule Number: MSB 14-04-02-B

Division / Contact / Phone: Long Term Services and Supports/Colin Laughlin/303-866-2549

**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).

The addition of Section 8.515.85 will provide Supportive Living Program providers with guidelines for service provision. Prior to this addition, there were no rules for Supportive Living Program providers under the HCBS Brain Injury Waiver.

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 USC §1396n

4. State Authority for the Rule:

25.5-1-301 through 25.5-1-303, C.R.S. (2013);  
§§ 25.5-6-704 and 706 C.R.S. (2013)

Initial Review

**07/11/2014**

Final Adoption

**08/08/2014**

Proposed Effective Date

**10/01/2014**

Emergency Adoption

Title of Rule: Revision to the Medical Assistance Rule Concerning Home and Community Based Services Brain Injury Waiver, Section 8.515.85

Rule Number: MSB 14-04-02-B

Division / Contact / Phone: Long Term Services and Supports/Colin Laughlin/303-866-2549

## **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 who qualify for the HCBS- BI Waiver will now have access to the Supportive Living Program as a service. Although there is not a waitlist for the HCBS-BI waiver, there is a waitlist for the SLP due to a lack of incentive for providers and a low number of available beds. Class A Providers will now have rules governing the provision of the SLP in the event they choose to offer this service.

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 new rules governing the Supportive Living Program will ensure the consistent delivery of SLP services across the provider pool. The implementation of new rules surrounding SLP will expand the provider pool, thus allowing potential SLP recipients a wider range of choices when selecting an SLP provider. This rule will enable persons who wish to transition out of the SLP at any time they choose, and to have an individualized and person-centered care plan.

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.

The new rules will enable current SLP providers to better regulate this service. Potential SLP providers will have more direction. The anticipated cost to the Department is indeterminate at this time. The implementation of these rules may increase cost due to the expansion of the provider pool and increased access for HCBS-BI recipients to the program. However, some cost may be offset by service substitution, when clients shift off other HCBS-BI waiver services in order to receive them under the SLP service. Costs may also be offset by increased regulation on SLP providers. The Department will monitor the impact of the rule change and will account for any additional costs or savings via the regular budgetary process.

4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

Without the implementation of the new SLP rules, current SLP providers remain hesitant or unable to provide this service to HCBS-BI clients, and the incentive for potential SLP providers to offer this service remains low. Without rules governing the Supportive Living Program, SLP provider fees remain unregulated, which may add to cost of the service.

5. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

The SLP program needs rules in place to ensure that it is regulated and there are no less costly or intrusive methods for providing guidance for current and future SLP providers.

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.

Defining the Supportive Living Program for HCBS-BI Waiver recipients and expansion of the provider pool cannot be accomplished in any other way than via rule implementation as proposed by the addition of 8.515.85. Additionally, the passage of these rules are the appropriate avenue for regulating SLP providers.

## 8.515.85 SUPPORTIVE LIVING PROGRAM

### 8.515.85.A DEFINITIONS

Activities of Daily Living (ADLs) mean basic self-care activities, including mobility, bathing, toileting, dressing, eating, transferring, support for memory and cognition, and behavioral supervision.

Assistance means the use of manual methods to guide, assist, with the initiation or completion of voluntary movement or functioning of an individual's body through the use of physical contact by others, except for the purpose of providing physical restraint.

Assistive Technology Devices means any item, piece of equipment, or product system that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.

Authorized Representative means an individual designated by the client or the legal guardian, if appropriate, who has the judgment and ability to assist the client in acquiring and utilizing supports and services.

Behavioral Management and Education means services as defined in 10 CCR 2505-10 § 8.516.40.A and inclusions as defined at § 8.516.40.B, as an individually developed intervention designed to decrease/control the client's severe maladaptive behaviors which, if not modified, will interfere with the client's ability to remain integrated in the community.

Case Management Agency (CMA) means an agency within a designated service area where an applicant or client can obtain Case Management services. CMAs include Single Entry Points (SEP), Community Centered Boards (CCB), and private case management agencies.

Case Manager means an individual employed by a CMA who is qualified to perform the following case management activities: determination of an individual client's functional eligibility for the Home and Community Based Services – Brain Injury (HCBS-BI) waiver, development and implementation of an individualized and person-centered Service Plan for the client, coordination and monitoring of HCBS-BI waiver services delivery, evaluation of service effectiveness, and the periodic reassessment of such client's needs.

Certification means documentation from the Colorado Department of Public Health and Environment (CDPHE) certifying that the Supportive Living Program (SLP) provider has met all licensing requirements as a Home Care Agency Class A (HCA) or Assisted Living Residence (ALR), in addition to all requirements in these regulations at 10 CCR 2505-10, § 8.515.85.

Critical Incident means an actual or alleged event or situation that creates a significant risk of substantial or serious harm to the health or welfare of a client that could have, or has had, a negative impact on the mental and/or physical well-being of a client in the short or long term. A critical incident includes accidents, suspicion of abuse, neglect, or exploitation, and criminal activity.

Department means the Department of Health Care Policy and Financing.

Health Maintenance Activities means those routine and repetitive health related tasks, which are necessary for health and normal bodily functioning, that an individual with a disability would carry out if he/she were physically able, or that would be carried out by family members or friends if they were available. These activities include, but are not limited to, catheter irrigation, administration of medication, enemas, suppositories, and wound care.

Independent Living Skills Training means services designed and directed at the development and maintenance of the client's ability to independently sustain himself/herself physically, emotionally, and economically in the community.

Instrumental Activities of Daily Living (IADLs) means activities related to independent living, including preparing meals, managing money, shopping for groceries or personal items, performing light or heavy housework and communication.

Interdisciplinary Team means a group of people responsible for the implementation of a client's individualized care plan, including the client receiving services, the parent or guardian of a minor, a guardian or an authorized representative, as appropriate, the person who coordinates the provision of services and supports, and others as determined by the client's needs and preferences, who are assembled in a cooperative manner to develop or review the person-centered care plan.

Personal Care Services includes providing assistance with eating, bathing, dressing, personal hygiene or other activities of daily living. When specified in the service plan, Personal Care Services may also include housekeeping chores such as bed making, dusting, and vacuuming. Housekeeping assistance must be incidental to the care furnished or essential to the health and welfare of the individual rather than for the benefit of the individual's family.

Person-Centered Care Plan is a service plan created by a process that is driven by the individual and can also include people chosen by the individual. It provides necessary information and support to the individual to ensure that the individual directs the process to the maximum extent possible. It documents client choice, establishes goals, identifies potential risks, assures health and safety, and identifies the services and supports the client needs to function safely in the community.

Protective Oversight is defined as monitoring and guidance of a client to assure his/her health, safety, and well-being. Protective oversight includes, but is not limited to: monitoring the client while on the premises, monitoring ingestion and reactions to prescribed medications, if appropriate, reminding the client to carry out activities of daily living, and facilitating medical and other health appointments. Protective oversight includes the client's choice and ability to travel and engage independently in the wider community, and providing guidance on safe behavior while outside the Supportive Living Program.

Room and Board is defined as a comprehensive set of services that include lodging, routine or basic supplies for comfortable living, and nutritional and healthy meals and food for the client, all of which are provided by the Supportive Living Program provider, and are not included in the per diem.

#### 8.515.85.B CLIENT ELIGIBILITY

1. Supportive Living Program services are available to individuals who meet all of the following requirements:
  - a. Clients are determined functionally eligible for Home and Community Based Services Brain Injury waiver by a certified case management agency;
  - b. Clients are enrolled in the Home and Community Based Services Brain Injury waiver; and
  - c. Clients require the specialized services provided under the Supportive Living Program as determined by assessed need.

#### 8.515.85.C SUPPORTIVE LIVING PROGRAM INCLUSIONS

1. Supportive Living Program services consist of structured services designed to provide:
  - a. Assessment;

- b. Protective Oversight and supervision;
- c. Behavioral Management and Education;
- d. Independent Living Skills Training in a group or individualized setting to support:
  - i. Interpersonal and social skill development;
  - ii. Improved household management skills; and
  - iii. Other skills necessary to support maximum independence, such as financial management, household maintenance, recreational activities and outings, and other skills related to fostering independence;
- e. Community Participation;
- f. Transportation between therapeutic activities in the community;
- g. Activities of Daily Living (ADLs);
- h. Personal Care and Homemaker services; and
- i. Health Maintenance Activities.

## 2. Person-Centered Care Planning

Supportive Living Program providers must abide by the Person-Centered Care Planning process. Providers will work with Case Management Agencies to ensure coordination of a client's Person-Centered Care Plan. Additionally, Supportive Living Program providers must provide the following actionable plans for all HCBS-BI waiver clients updated every six (6) months:

- a. Transition Planning; and
- b. Goal Planning.

These elements of a Person-Centered Care Plan are intended to ensure the client actively engages in his or her care and activities as well as ensure he or she is able to transition to any other type of setting or service at any given time.

## 3. Exclusions

The following are not included as components of the Supportive Living Program:

- a. Room and board; and
- b. Additional services which are available as a State Plan benefit or other HCBS-BI waiver service. Examples include, but are not limited to: physician visits, mental health counseling, substance abuse counseling, specialized medical equipment and supplies, physical therapy, occupational therapy, long term home health, and private duty nursing.

## 8.515.85.D PROVIDER LICENSING AND CERTIFICATION REQUIREMENTS



1. Supportive Living Program providers shall be licensed by CDPHE as an Assisted Living Residence (ALR) pursuant to 6 CCR 1011-1, Ch. 7, or as a Home Care Agency Class A (HCA) pursuant to 6 CCR 1011-1, Ch. 26. Providers participating in the Supportive Living Program as of December 1, 2014, must fully comply with these regulations at 10 CCR 2505-10, § 8.515.85, no later than January 1, 2016.
2. In addition to the requirements of § 8.515.85.D.1, Supportive Living Program providers must also receive annual Certification by CDPHE. CDPHE issues or renews a Certification when the provider is in full compliance with the requirements set out in these regulations. Certification is valid for one year from the date of issuance unless voluntarily relinquished by the provider, revoked, suspended, or otherwise sanctioned pursuant to these regulations.
3. No Certification shall be issued or renewed by CDPHE if the owner, applicant, or administrator of the Supportive Living Program has been convicted of a felony or of a misdemeanor involving moral turpitude as defined by law or involving conduct that CDPHE determines could pose a risk to the health, safety, and welfare of clients.
4. In addition to meeting the requirements of this section, Supportive Living Program providers shall be licensed in accordance with C.R.S. §§ 25-1.5-103 (2013) and 25-3-101, et seq. (2013). Supportive Living Program providers who are Home Care Agencies shall be licensed in accordance with C.R.S. § 25-27.5-101, et seq. (Aug. 5, 2013). Supportive Living Program providers who are Assisted Living Residences shall be licensed in accordance with C.R.S. § 25-27-101, et seq. (Jul. 1, 2013). These statutes are hereby incorporated by reference. The incorporation of these statutes excludes later amendments to, or editions of the referenced material. Pursuant to C.R.S. § 24-4-103(12.5), the Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at 1570 Grant Street, Denver, CO, 80203. Certified copies of incorporated materials are provided at cost upon request.
5. CDPHE may deny, suspend, revoke, or not renew the Certification of any Supportive Living Program provider who is out of compliance with the requirements of these regulations. Providers may appeal this process pursuant to the State Administrative Procedure Act, C.R.S. § 24-4-101, et seq. (2013).

#### 8.515.85.E PROVIDER RESPONSIBILITIES

Supportive Living Program providers must follow all person-centered planning initiatives undertaken by the State to ensure client choice.

#### 8.515.85.F HCBS PROGRAM CRITERIA

1. All HCBS Program Criteria must be fully implemented in accordance with the final Department transition plan for compliance with federal Home and Community-Based Settings requirements. The federal regulations can be found at 42 C.F.R., Chapter IV, Parts 430, 431, 435, 436, 440, 441, and 447 (Mar. 17, 2014), which are hereby incorporated by reference. The incorporation of these regulations excludes later amendments to, or editions of the referenced material. Pursuant to C.R.S. § 24-4-103(12.5), the Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at 1570 Grant Street, Denver, CO, 80203. Certified copies of incorporated materials are provided at cost upon request.

The following will be used to establish program criteria for Supportive Living Program providers in establishing a home-like environment pursuant to 42 C.F.R. § 440.180. In accordance with 42 C.F.R. § 441.301, the setting must:

- a. Be integrated in and support full access to the greater community;
  - b. Be selected by the client from among setting options;
  - c. Ensure client rights of privacy, dignity, and respect, and freedom from coercion and restraint;
  - d. Optimize individual initiative, autonomy, and independence in making life choices;
  - e. Facilitate client choice regarding services and supports, and who provides them;
  - f. Put in place a lease or other written agreement providing similar protections for the client that addresses eviction processes and appeals;
  - g. Ensure privacy in the client's unit including lockable doors, choice of roommates, and freedom to furnish or decorate the unit;
  - h. Ensure that clients have the freedom and support to control their own schedules and activities, and have access to food at any time;
  - i. Each client shall have the right to receive and send packages. No client's outgoing packages shall be opened, delayed, held, or censored by any person;
  - j. Each client has the right to receive and send sealed, unopened correspondence. No client's incoming or outgoing correspondence shall be opened, delayed, held, or censored by any person;
  - k. Enable clients to have visitors of their choosing at any time; and
  - l. Be physically accessible.
2. The provider must ensure adherence to all state assurances set forth at 42 C.F.R. § 441.302 (Jan. 16, 2014), which is hereby incorporated by reference. The incorporation of these regulations excludes later amendments to, or editions of the referenced material. Pursuant to C.R.S. § 24-4-103(12.5), the Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at 1570 Grant Street, Denver, CO, 80203. Certified copies of incorporated materials are provided at cost upon request.

3. Exceptions

Exceptions exist to the aforementioned HCBS Program Criteria listed in Section 8.515.85.F.1 of this rule when clear rationale and reasoning exist and is supported by appropriate documentation. These exceptions are for the corresponding sections in Section 8.515.85.F.1 of this rule, and are as follows:

- a. HCBS Program Criteria under 8.515.85.F.1, a through k:

Requirements of program criteria may be modified if supported by a specific assessed need and justified and agreed to in the person-centered care plan pursuant to 42 C.F.R.

§ 441.302 (Jan. 16, 2014). The following requirements must be documented in the person-centered care plan:

- i. Identify a specific and individualized assessed need.
- ii. Document the positive interventions and supports used prior to any modifications to the person-centered care plan.
- iii. Document less intrusive methods of meeting the need that have been tried but did not work.
- iv. Include a clear description of the modification that is directly proportionate to the specific assessed need.
- v. Include regular collection and review of data to measure the ongoing effectiveness of the modification.
- vi. Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.
- vii. Include the informed consent of the individual.
- viii. Include an assurance that interventions and supports will cause no harm to the individual.

b. HCBS Program Criteria under 8.515.85.F.1.b and e:

- i. When a client chooses to receive Home and Community-Based Services in a provider-owned or controlled setting where the provider is paid a single rate to provide a bundle of services, the client cannot choose an alternative provider to deliver services that are included in the bundled rate.
- ii. For any services that are not included in the bundled rate, the client may choose any qualified provider, including the provider who controls or owns the setting if the provider offers the service separate from the bundle.
- iii. To illustrate these HCBS Program Criteria b and e requirements by way of example, if a program provides habilitation connected with daily living and on-site supervision under a bundled rate, an individual is choosing the residential provider for those two services when he or she chooses the residence. The individual has free choice of providers for any other services in his or her service plan, such as therapies, home health or counseling.

c. HCBS Program Criteria under 8.515.85.F.1.c:

When a client needs assistance with challenging behavior, including a client whose behavior is dangerous to himself, herself, or others, or when the client engages in behavior that results in significant property destruction, the Supportive Living Program must properly create service and support plans detailing plans to appropriately address these behaviors.

d. HCBS Program Criteria under 8.515.85.F.1.g:

Requirements for a lockable entrance door may be modified if supported by a specific assessed need and justified and agreed to in the person-centered service plan pursuant to 42 C.F.R. § 441.302 (Jan. 16, 2014), which is hereby incorporated by reference. The incorporation of this regulation excludes later amendments to, or editions of the referenced material. Pursuant to C.R.S. § 24-4-103(12.5), the Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at 1570 Grant Street, Denver, CO, 80203. Certified copies of incorporated materials are provided at cost upon request.

8.515.85.G STAFFING

1. The Supportive Living Program provider shall ensure sufficient staffing levels to meet the needs of clients, and shall meet all other staffing requirements pursuant to 6 CCR 1011-1, Ch. 7, § 1.104(4)(a) , which states the following:
  - a. The owner shall employ sufficient staff to ensure the provision of services necessary to meet the needs of the residents; and
  - b. In determining staffing, the facility shall give consideration to factors including but not limited to:
    - i. Services to meet the residents' needs,
    - ii. Services to be provided under the care plan, and
    - iii. Services to be provided under the resident agreement.
  - c. Each facility shall ensure that at least one staff member who has the qualifications and training listed under Sections 1.104(3)(e) and (f), and who shall be at least 18 years of age, is present in the facility when one or more residents is present. These regulations are hereby incorporated by reference. The incorporation of these regulations exclude later amendments to, or editions of the referenced material. Pursuant to C.R.S. § 24-4-103(12.5), the Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at 1570 Grant Street, Denver, CO, 80203. Certified copies of incorporated materials are provided at cost upon request.

In addition to these regulations, staff should be trained in how to work with an individual or individuals in difficult situations that may arise in the course of their work.

2. The operator, staff, and volunteers who provide direct client care or protective oversight must be trained in relevant precautions and emergency procedures, including first aid, to ensure the safety of the clientele. The SLP provider shall adhere to all other regulations pursuant to 6 CCR 1011-1, Ch. 7, §§ 1.103(8) and § 1.104(1)-(2), which are hereby incorporated by reference. The incorporation of this regulation excludes later amendments to, or editions of the referenced material. Pursuant to C.R.S. § 24-4-103(12.5), the Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at 1570 Grant Street, Denver, CO, 80203. Certified copies of incorporated materials are provided at cost upon request.
3. Within one month of the date of hire, the Supportive Living Program provider shall provide adequate training for staff on each of the following topics:

- a. Crisis prevention;
  - b. Identifying and dealing with difficult situations;
  - c. Cultural competency;
  - d. Infection control; and
  - e. Grievance and complaint procedures.
4. Prior to providing direct care, the Supportive Living Program provider shall provide to the operator, staff, and volunteers an orientation of the location in which the program operates and adequate training on person-centered care planning.
  5. All staff training shall be documented. Copies of person-centered care plan training and related documentation must be submitted to the Department. Copies must also be submitted for inspection and approval upon changing the training curriculum.
  6. In addition to the relevant requirements imposed by CDPHE in 6 CCR 1011-1 Ch. 7 on Assisted Living Residence and 6 CCR 1011-1 Ch. 26 on Home Care Agencies, the Department requires that the program director shall have an advanced degree in a health or human service related profession plus two years of experience providing direct services to persons with a brain injury. A bachelor's or nursing degree with three years of similar experience or a combination of education and experience shall be an acceptable substitute.
  7. The provider shall employ or contract for behavioral services and skill training services according to client needs.
  8. The Supportive Living Program provider shall employ staff qualified by education, training, and experience according to orientation and training requirements indicated within 10 CCR 2505-10, § 8.525.85.G. The Supportive Living Program shall have staff on duty as necessary to meet the needs of clients at all times, so that provision of services is not dependent upon the use of clients to perform staff functions. Volunteers may be utilized in the home but shall not be included in the provider's staffing plan in lieu of employees.
  9. The Supportive Living Program provider shall have written personnel policies. Each staff member shall be provided a copy upon employment and the administrator or designee shall explain such policies during the initial staff orientation period.
  10. All Supportive Living Program provider staff, prospective staff, and volunteers shall undergo a criminal background check through the Colorado Bureau of Investigation. Any person convicted of an offense that could pose a risk to the health, safety, and welfare of clients shall not be employed by the provider. If the provider or prospective staff disagree with assessment of risk they are allowed to appeal the decision to the Department. All costs related to obtaining a criminal background check shall be borne by the provider.

#### 8.515.85.H CLIENT RIGHTS AND PROPERTY

1. Clients shall have all rights stated in 10 CCR 2505-10 § 8.515.85.F.1, (HCBS Program Criteria) and in accordance with 42 C.F.R. § 441.301 (Jan. 16, 2014), which is hereby incorporated by reference. The incorporation of this regulation excludes later amendments to, or editions of the referenced material. Pursuant to C.R.S. § 24-4-103(12.5), the Department maintains copies of this incorporated text in its entirety,

available for public inspection during regular business hours at 1570 Grant Street, Denver, CO, 80203. Certified copies of incorporated materials are provided at cost upon request.

2. The provider shall have policies on management of client funds and property consistent with those at 6 CCR 1011-1 Ch. 7, §1.105(3), which states the following:
  - a. A facility may enter into a written agreement with the resident or resident's legal representative for the management of a resident's funds or property. However, there shall be no requirement for the facility to handle resident funds or property.
    - i. Written Agreement. A resident or the resident's legal representative may authorize the owner to handle the resident's personal funds or property. Such authorization shall be in writing and witnessed and shall specify the financial management services to be performed.
    - ii. Fiduciary Responsibility. In the event that a written agreement for financial management services is entered into, the facility shall exercise fiduciary responsibility for these funds and property, including, but not limited to, maintaining any funds over the amount of five hundred dollars (\$500) in an interest bearing account, separate from the general operating fund of the facility, which interest shall accrue to the resident.
    - iii. Surety Bond. Facilities which accept responsibility for residents' personal funds shall post a surety bond in an amount sufficient to protect the residents' personal funds.
    - iv. Accounting.
      - 1) A running account, dated and in ink, shall be maintained of all financial transactions. There shall be at least a quarterly accounting provided to the resident or legal representative itemizing in writing all transactions including at least the following: the date on which any money was received from or disbursed to the resident; any and all deductions for room and board and other expenses; any advancements to the resident; and the balance.
      - 2) An account shall begin with the date of the first handling of the personal funds of the resident and shall be kept on file for at least three years following termination of the resident's stay in the facility. Such record shall be available for inspection by the Department.
    - v. Receipts. Residents shall receive a receipt for and sign to acknowledge disbursed funds.
  3. Upon client request, a client shall be entitled to receive available money or funds held in trust.

#### 8.515.85.I FIRE SAFETY AND EMERGENCY PROCEDURES

1. Applicants for initial provider Certification shall meet the applicable standards of the Life Safety Code, in accordance with 8 CCR 1507-31 (Aug. 26, 2013), which is hereby incorporated by reference. The incorporation of these regulations excludes later

amendments to, or editions of the referenced material. Pursuant to C.R.S. § 24-4-103(12.5), the Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at 1570 Grant Street, Denver, CO, 80203. Certified copies of incorporated materials are provided at cost upon request.

2. Existing Supportive Living Program providers with a Certification in effect prior to December 31st, 2014, may continue to utilize existing approved fire safety systems provided they remain in compliance, and there is no change in evacuation status of a client, nor a client admission or discharge that alters the residence overall fire safety rating, and provided no renovation of 25 percent or greater to the total interior of the physical plant is performed. If such a change, admission, discharge or renovation occurs, the home shall be required to meet the applicable standards referenced in 10 CCR 2505-10 § 8.515.85.I.
3. Providers shall develop written emergency plans and procedures for fire, serious illness, severe weather, disruption of essential utility services, and missing persons for each client. Emergency and evacuation procedures shall be consistent with any relevant local fire codes and the provisions set forth in 6 CCR 1011-1 Ch. 7, §1.104(5)(b) and (c), which state the following:
  - a. Emergency plan. The emergency plan shall include planned responses to fire, gas explosion, bomb threat, power outages, and tornadoes. Such plan shall include provisions for alternate housing in the event evacuation is necessary.
  - b. Disclosure to residents. Within three (3) days of admission, the plan shall be explained to each resident or legal representative, as appropriate.
  - c. The policy shall describe the procedures to be followed by the facility in the event of serious illness, serious injury, or death of a resident.
  - d. The policy shall include a requirement that the facility notify an emergency contact when the resident's injury or illness warrants medical treatment or face-to-face medical evaluation. In the case of an emergency room visit or unscheduled hospitalization, a facility must notify an emergency contact immediately, or as soon as practicable.
4. Within three (3) days of scheduled work or commencement of volunteer service, the program shall provide adequate training for staff in emergency and fire escape plan procedures.
5. Staff and clients shall have training on, and practices of, emergency plans and procedures, in addition to fire drills, at intervals throughout the year. There shall be at least two fire drills conducted annually during the evening and overnight hours while clients are sleeping. All such practices and training shall be documented and reviewed every six (6) months. Such documentation shall include any difficulties encountered and any needed adaptations to the plan. Such adaptations shall be implemented immediately upon identification.

#### 8.515.85.J ENVIRONMENTAL AND MAINTENANCE REQUIREMENTS

1. A Supportive Living Program residence shall be designed, constructed, equipped, and maintained to ensure the physical safety of clients, personnel, and visitors as required by 6 CCR 1011-1, Ch. 7, § 1.111, regarding the interior and exterior environment:

- a. Interior Environment: All interior areas including attics, basements, and garages shall be safely maintained. The facility shall provide a clean, sanitary environment, free of hazards to health and safety.

i. Potential Safety Hazards include:

- 1) Cooking shall not be allowed in bedrooms. Residents may have access to an alternative area where minimal food preparation such as heating or reheating food or making hot beverages is allowed. In those facilities which make housing available to residents through apartments rather than resident bedrooms, cooking may be allowed in accordance with house rules. Only residents who are capable of cooking safely shall be allowed to do so. The facility shall document such assessment.
- 2) Extension cords and multiple use electrical sockets in resident rooms shall be limited to one per resident.
- 3) Power strips are permitted throughout the facility with the following limitations:
  - a) The power strip must be provided with overcurrent protection in the form of a circuit breaker or fuse.
  - b) The power strip must have a UL (underwriters laboratories) label.
  - c) The power strips cannot be linked together when used.
  - d) Extension cords cannot be plugged into the power strip.
  - e) Power strips can have no more than six receptacles.
  - f) The use will be restricted to one power strip per resident per bedroom.
- 4) Personal Appliances shall be allowed in resident bedrooms only under the following circumstances:
  - a) Such appliances are not used for cooking;
  - b) Such appliances do not require use of an extension cord or multiple use electrical sockets;
  - c) Such appliance is in good repair as evaluated by the administrator;
  - d) Such appliance is used by a resident who the administrator believes to be capable of appropriate and safe use. The facility shall document such assessment.
- 5) Electric blanket/Heating pad. In no event shall a heating pad or electric blanket be used in a resident room without either staff supervision or documentation that the administrator believes the resident to be capable of appropriate and safe use.



- 6) All interior areas including attics, basements, and garages shall be free from accumulations of extraneous materials such as refuse, discarded furniture, and old newspapers.
- 7) Combustibles such as cleaning rags and compounds shall be kept in closed metal containers.
- 8) Kerosene (fuel fired) heaters shall not be permitted within the facility. Electric or space heaters shall not be permitted within resident bedrooms and may only be used in common areas of the facility if owned, provided, and maintained by the facility.
- 9) Fire resistant wastebaskets. Enclosed areas on the premises where smoking is allowed shall be equipped with fire resistant wastebaskets. In addition, resident rooms occupied by smokers, even when house rules prohibit smoking in resident rooms, shall have fire resistant wastebaskets.

ii. Potential Infection/Injury Hazards

- 1) Insect/rodent infestations. The facility shall be maintained free of infestations of insects and rodents and all openings to the outside shall be screened.
- 2) Storage of hazardous substances. Solutions, cleaning compounds and hazardous substances shall be labeled and stored in a safe manner.

iii. Heating, Lighting, and Ventilation

- 1) Each room in the facility shall be installed with heat, lighting and ventilation sufficient to accommodate its use and the needs of the residents.
- 2) All interior and exterior steps and interior hallways and corridors shall be adequately illuminated.

iv. Water

- 1) There shall be an adequate supply of safe, potable water available for domestic purposes.
- 2) There shall be a sufficient supply of hot water during peak usage demands.
- 3) Hot water shall not measure more than 120 degrees Fahrenheit at taps which are accessible by resident.

- v. There shall be a telephone available for regular telephone usage by residents and staff.

b. Exterior Environment

i. Potential Safety Hazards

- 1) Exterior premises shall be kept free of high weeds and grass, garbage and rubbish. Grounds shall be maintained to prevent hazardous slopes, holes, or other potential hazards.
  - 2) Exterior staircases of three (3) or more steps and porches shall have handrails. Staircases and porches shall be kept in good repair.
2. The Supportive Living Program provider shall comply with all State and Local Laws/Codes regarding furnishings, equipment and supplies pursuant to 6 CCR 1011-1, Ch. 7, § 1.112 (Aug. 14, 2013), which is hereby incorporated by reference. The incorporation of these regulations excludes later amendments to, or editions of the referenced material. Pursuant to C.R.S. § 24-4-103(12.5), the Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at 1570 Grant Street, Denver, CO, 80203. Certified copies of incorporated materials are provided at cost upon request.
3. Clients shall be allowed free use of all common living areas within the residence, with due regard for privacy, personal possessions, and safety of clients.
4. Supportive Living Program providers shall develop and implement procedures for the following:
  - a. Handling of soiled linen and clothing;
  - b. Storing personal care items;
  - c. General cleaning to minimize the spread of pathogenic organisms; and
  - d. Keeping the home free from offensive odors and accumulations of dirt and garbage.
5. The Supportive Living Program provider shall ensure that each client is furnished with his or her own personal hygiene and care items. These items are to be considered basic in meeting an individual's needs for hygiene and remaining healthy. Any additional items may be selected and purchased by the client at his or her discretion.
6. There shall be adequate bathroom facilities for individuals to access without undue waiting or burden.
7. The Supportive Living Program provider shall comply with all bathroom requirements regarding handrails, handholds, and other needs of clients pursuant to 6 CCR 1101-1 Ch. 7, § 1.112(4) a. A full bathroom shall consist of at least the following fixtures: toilet, hand washing sink, toilet paper dispenser, mirror, tub or shower, and towel rack. However, any facility licensed to provide services specifically for the mentally ill prior to January 1, 1992 may have one bathroom for every eight (8) residents until either a substantial remodeling or a change of ownership occurs.
  - b. There shall be a bathroom on each floor having resident bedrooms which is accessible without requiring access through an adjacent bedroom.
  - c. In any facility which is occupied by one or more residents utilizing an auxiliary aid, the facility shall provide at least one full bathroom as defined herein with fixtures positioned so as to be fully accessible to any resident utilizing an auxiliary aid.

- d. Bathtubs and shower floors shall have non-skid surfaces.
  - e. Grab bars shall be properly installed at each tub and shower, and adjacent to each toilet in any facility which is occupied by one or more residents utilizing an auxiliary aid or as otherwise indicated by the needs of the resident population.
  - f. Toilet seats shall be constructed of non-absorbent material and free of cracks.
  - g. The use of common personal care articles, including soap and towels, is prohibited.
  - h. Toilet paper in a dispenser shall be available at all times in each bathroom of the facility.
  - i. Liquid soap and paper towels shall be available at all times in the common bathrooms of the facility.
8. Each client shall have access to telephones, both to make and to receive calls in privacy.
9. The Supportive Living Staff shall maintain a clean, safe, and healthy environment, including appropriate cleaning techniques and sanitary meal preparation and delivery according to 6 CCR 1011-1, Ch. 7, § 1.109, which requires the following:
- a. For facilities with less than twenty (20) beds, food shall be prepared, handled and stored in a sanitary manner, so that it is free from spoilage, filth, or other contamination, and shall be safe for human consumption.
  - b. Hazardous materials shall not be stored with food supplies.
  - c. Facilities with twenty (20) beds or more shall comply with CDPHE's March 1, 2013 regulations on Colorado Retail Food Establishments at 6 CCR 1010-2, which are hereby incorporated by reference. The incorporation of these regulations excludes later amendments to, or editions of the referenced material. Pursuant to C.R.S. § 24-4-103(12.5), the Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at 1570 Grant Street, Denver, CO, 80203. Certified copies of incorporated materials are provided at cost upon request.

#### 8.515.85.K COMPLAINTS AND GRIEVANCES

Each client will have the right to voice grievances and recommend changes in policies and services to both the Department and/or the Supportive Living Program provider. Complaints and grievances made to the Department shall be made in accordance with the grievance and appeal process in 10 CCR 2505-10 § 8.209.

#### 8.515.85.M RECORDS

- 1. Supportive Living Providers shall develop policies and procedures to secure client information against potential identity theft. Confidentiality of medical records shall be maintained in compliance with 45 C.F.R. §§ 160.101, et seq. and 164.102, et seq. (2014), which are hereby incorporated by reference. The incorporation of these regulations excludes later amendments to, or editions of the referenced material. Pursuant to C.R.S. § 24-4-103(12.5), the Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at 1570 Grant Street,

Denver, CO, 80203. Certified copies of incorporated materials are provided at cost upon request.

2. All medical records for adults (persons eighteen (18) years of age or older) shall be retained for no less than six (6) years after the last date of service or discharge from the Supportive Living Program. All medical records for minors shall be retained after the last date of service or discharge from the Supportive Living Program for the period of minority plus six (6) years.

8.515.85.N REIMBURSEMENT

1. Supportive Living Program services shall be reimbursed according to a per diem rate, using a methodology determined by the Department. Authority for the Department to define and limit covered services is found at C.R.S. § 25.5-1-202 (2013).
2. The methodology for calculating the per diem rate shall be based on a weighted average of client acuity scores.
3. The Department shall establish a maximum allowable room and board charge for clients in the Supportive Living Program. Increases in payment shall be permitted in a dollar-for-dollar relationship to any increase in the Supplemental Security Income grant standard inasmuch as the Colorado Department of Human Services also raises its grant amounts.

**John W. Suthers**  
Attorney General

**Cynthia H. Coffman**  
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**State of Colorado**  
**Department of Law**  
**Office of the Attorney General**

Tracking number: 2014-00627

**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 08/08/2014**

10 CCR 2505-10

**MEDICAL ASSISTANCE - STATEMENT OF BASIS AND PURPOSE, AND RULE HISTORY**

The above-referenced rules were submitted to this office on 08/11/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

August 20, 2014 16:14:00

**John W. Suthers**  
Attorney General  
by Daniel D. Domenico  
Solicitor General

## **Permanent Rules Adopted**

### **Department**

Department of Human Services

### **Agency**

Division of Rehabilitation (Volume 9)

### **CCR number**

12 CCR 2513-1

### **Rule title**

12 CCR 2513-1 RULE MANUAL VOLUME 9, REHABILITATION SERVICES 1 - eff  
10/01/2014

### **Effective date**

10/01/2014

Tracking# 2014-00602  
FA/P 8/8/14, eff. 10/1/14

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## (12 CCR 2513-1)

[Instructions: Insert the following paragraph at the end of the Statement of Basis and Purpose section.]

Revisions and additions to Sections 9.100 through 9.108.3 were final adoption following publication at the 8/8/2014 State Board meeting (Rule-making# 14-3-10-1), with an effective date of 10/1/2014. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporate 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 Enterprise Partnerships, State Board Administration.

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[Instructions: Replace the following sections.]

### **9.100 VOCATIONAL REHABILITATION PROGRAM**

#### **9.101 PERSONNEL STANDARDS [Rev. eff. 8/1/15]**

Federal law requires state vocational rehabilitation agencies to establish qualified personnel standards for rehabilitation personnel, including rehabilitation counselors. Since Colorado does not have state-established standards for rehabilitation counselors, the state shall look to the national standards established by the Commission on Rehabilitation Counselor Certification (CRCC). Other positions within the rehabilitation counselor series such as vocational evaluators, orientation and mobility (O&M) specialists, and rehabilitation teachers are also required to meet the standards of appropriate certifying bodies.

#### **9.102 PROTECTION, USE, AND RELEASE OF PERSONAL INFORMATION [Eff. 4/1/13]**

##### **9.102.1 Confidential Information [Eff. 4/1/13]**

All applicants or their representatives shall be informed about DVR's need to collect personal information and the principal purposes for which DVR will use that information. Any information secured by or made available to DVR and/or its employees or representatives concerning referrals, applicants or eligible individuals of the vocational rehabilitation program is considered confidential. Use of such information, current or stored, is limited to purposes directly connected to the administration of the Vocational Rehabilitation Program as identified in Sections 9.102.2 and 9.102.3 and is not to be otherwise disclosed, directly or indirectly. Individuals shall be notified of the confidential nature of their case records and the conditions for release of such information at the time of application.

##### **9.102.2 Release to Applicants or Eligible Individuals [Rev. eff. 10/1/14]**

Information acquired or maintained by the Division of Vocational Rehabilitation (DVR) will be available upon written request, for inspecting and copying by an applicant or eligible individual or, as appropriate, the individual's representative, in accordance with the Colorado Open Records Act (Section 24 72-201,

et. seq., C.R.S.), unless release of such information is prohibited by state or federal statutes, case law, or rules and regulations.

Medical, psychological or other information which the counselor determines may be harmful to the individual shall not be released directly to the individual, rather such information shall be provided through a third party chosen by the individual. Any employee of DVR shall not disclose the information listed below to the applicant or eligible individual and/or his or her authorized representative.

- A. Social Security Administration (SSA) information except when requested by the Client Assistance Program on behalf of the client;
- B. Information from the U.S. Department of Veterans Affairs;
- C. Medical or psychological information, when the service provider states in writing that disclosure to the individual is prohibited.

Applicants and eligible individuals requesting such information shall be referred to the originating source of the information.

### **9.102.3 Release to Other Programs or Authorities [Rev. eff. 10/1/14]**

- A. Confidential information may be released to other agencies or organizations when necessary for their programs only after receiving informed written consent from the subject of the information and under assurances that the agency or organization shall manage the information in a manner to safeguard its confidentiality in accordance with the confidentiality regulations governing vocational rehabilitation programs.
- B. Information may be released to other programs or authorities without an applicant's or eligible individual's written authorization when:
  - 1. The information is directly connected with the administration of the Vocational Rehabilitation Program used only by persons officially connected with an audit or evaluation, and the final report contains no identifying information;
  - 2. Sharing of the information, including pertinent medical and other data received from SSA, is necessary to establish an individual's eligibility for rehabilitation services and/or for the provision of such services under an Individualized Plan for Employment (IPE);
  - 3. The information is required by federal law;
  - 4. The information is necessary to respond to a request from law enforcement, fraud, or abuse (except where expressly prohibited by federal regulations or state statutes or rules), and in response to judicial order;
  - 5. The information is necessary in order to protect the individual or others when the individual poses a threat to his or her own safety or to the safety of others;
  - 6. The information is requested by the Social Security Administration (SSA); or,
  - 7. The Director of the Division of Vocational Rehabilitation approves release to an organization or individual engaged in research.

### **9.103 RIGHTS TO REVIEW AND APPEAL**

#### **9.103.1 Review of DVR Determinations [Rev. eff. 10/1/14]**



- A. An applicant or eligible individual who is dissatisfied with any determination made by the Division of Vocational Rehabilitation (DVR) that affects the provision of vocational rehabilitation services may request a review of that decision through an informal or formal process. The applicant or eligible individual may also utilize the mediation process to resolve disputes. If appropriate, any request for review or mediation may be made through the individual's authorized representative.
- B. An applicant or eligible individual shall be notified, in writing, of his/her appeal rights, established procedures for review of determinations, and the availability of the Client Assistance Program each time the following occur:
  - 1. At the time of application for services;
  - 2. At the time of placement into an Order of Selection (OOS) priority for services category;
  - 3. At the time of Individualized Plan for Employment (IPE) development and any time the IPE is amended;
  - 4. Any time that DVR makes a decision to reduce, suspend or terminate planned services;
  - 5. At the time a case is closed for reasons of ineligibility; and,
  - 6. At the time a case is closed from a deferred services wait list.
- C. An applicant or eligible individual shall be responsible for his/her personal costs (including, but not limited to, legal representation and copying fees) associated with his/her review, appeal or mediation unless otherwise ordered.
- D. An applicant's or eligible individual's appeal shall not result in suspension, reduction or termination of vocational rehabilitation services pending resolution of his/her appeal unless:
  - 1. An applicant or eligible individual or, if appropriate, the individual's representative requests a suspension, reduction or termination of services; or,
  - 2. There is evidence that fraud has occurred or that the vocational rehabilitation services were obtained through misrepresentation, collusion or criminal conduct by the individual on the part of an applicant, eligible individual or the individual's representative.

#### **9.103.2 Mediation of Disputes [Eff. 10/1/14]**

- A. An applicant or eligible individual may seek mediation by a qualified and impartial mediator as a means to resolve a dispute with the Division of Vocational Rehabilitation (DVR). The goal of mediation is to achieve consensus between an applicant or eligible individual and DVR. The individual may bring an authorized representative to assist him/her during the mediation process.
  - 1. The request for mediation shall be submitted, in writing, to the DVR administrative office at any time during the review process and no later than the 60th day from the date the formal hearing is requested. The request shall identify the decision or action that is being disputed, why it is being disputed and what solution is requested. A qualified and impartial mediator arranged through the state shall be provided at no cost to the applicant or individual.
  - 2. If the applicant or individual requests mediation, DVR shall participate unless:
    - a. It is not possible to resolve the dispute without placing the Department in clear violation of state or federal law, rules, policy or the approved State Plan;

- b. A mediated outcome is not possible based on documented evidence from previous experience with the individual concerning the issue under dispute;
  - c. The individual has committed acts of violence, has threatened acts of violence or has engaged in other forms of harassment against Department staff or any other individuals involved in the provision of vocational rehabilitation services; or,
  - d. The individual has failed to fulfill his or her responsibilities under a previous mediation agreement with DVR concerning the issue under dispute.
- B. DVR may seek mediation by a qualified and impartial mediator as a means to resolve a dispute with an applicant or eligible individual before he/she requests an informal review or a formal appeal if the individual agrees to participate.
- C. Mediation shall commence within twenty-one (21) days of the request for mediation and shall not delay conduct of the formal appeal unless both parties agree additional time is necessary.
 

Mediation is limited to a maximum of six (6) hours of mediation session(s) unless both parties and the mediator agree that additional hours may provide a resolution. Mediation shall be completed within one (1) calendar month of the initial request unless both parties and the impartial mediator agree that additional time is necessary.
- D. If mediation is successful, the consensus reached by both parties shall be documented in writing by the mediator and provided to both parties within seven (7) calendar days. Each party shall sign the agreement, which indicates agreement with its terms and a commitment to fulfill each party's respective responsibilities. If agreement on all issues is reached, the parties shall withdraw any pending informal review or formal appeal request. DVR shall not agree to any provision that it believes is contrary to state and federal law, rules, and policy or the approved State Plan.
- E. If mediation is not successful, the client may initiate, or proceed with, an informal review or a formal appeal of the issue under dispute.
- F. Failure of the applicant or eligible individual to honor his /her commitment under the terms of the mediation agreement shall void the mediation agreement.

### **9.103.3 Informal Review [Eff. 10/1/14]**

The applicant or eligible individual may request an informal review to resolve the issue(s) under dispute without mediation or conduct of a formal appeal. The informal resolution process will result in a decision by DVR regarding the issue under dispute. An individual shall not be required to go through an informal review prior to or instead of a formal appeal. Informal review shall be conducted within thirty (30) calendar days of the initial request unless both parties agree that additional time is necessary. Informal review shall not delay a formal appeal if one has been requested. If the informal review does not resolve the issue(s), and the formal appeal process has not been requested, the individual may request a formal appeal.

- A. Informal review begins with a request for the applicable DVR Supervisor I to review a decision concerning the provision of vocational rehabilitation services.
- B. If the applicant or eligible individual is not satisfied with the decision made by the Supervisor I, the applicant or eligible individual may take the next step and submit a written request for review to the Deputy of Field Services (or designee) to review the decision.

### **9.103.4 Formal Appeal Process [Rev. eff. 10/1/14]**

An applicant or eligible individual may initiate a formal appeal regarding a determination to resolve the issue(s) under dispute without mediation or conduct of an informal review.

- A. A written request for a formal appeal must be submitted to the Colorado Department of Personnel and Administration, Office of Administrative Courts (OAC), within ninety (90) calendar days of the subject determination made by the DVR counselor or other DVR staff that affects a provision of vocational rehabilitation services.
- B. The written request must be a statement detailing the basis of appeal, including a description of the determination made by DVR staff that the individual is appealing. The statement should include a description of what the individual wants from the appeal.
- C. An applicant or eligible individual and DVR may voluntarily participate in mediation through the OAC. Mediation may not be used to deny or delay an applicant's or eligible individual's right to pursue resolution of the dispute through the formal appeal process unless both parties agree that additional time is necessary for mediation.

#### **9.103.5 Formal Appeal Before the Office of Administrative Courts [Rev. eff. 10/1/14]**

- A. When the OAC receives a request for a formal appeal, the OAC shall notify DVR and the Attorney General's Office, Human Services Unit, that the request has been docketed and send a copy of the formal appeal request to DVR and the Attorney General's Office.
- B. DVR shall serve a notice to set an informal pre-hearing conference within ten (10) calendar days of receipt of the formal appeal request from the OAC. The purpose of the informal pre-hearing conference shall be to:
  - 1. Identify the issues for appeal.
  - 2. Set a date for DVR to provide a written statement summarizing the background and history of client services for the appeal.
  - 3. Set a date for a response from the appellant to respond to the summary and identify specific issues for the appeal. The appellant should identify specific remedies being sought, if known.
  - 4. Set the date for hearing within sixty (60) days, unless both parties agree that more time is needed and agree to extend beyond the sixty days.
  - 5. Set dates for an exchange of witness and exhibit list, as well as exchanging exhibits or other evidence.
- C. The Administrative Law Judge shall conduct the hearing within sixty (60) calendar days of an applicant's or eligible individual's request for formal appeal unless both parties agree additional time is necessary.
- D. The Administrative Law Judge shall conduct the hearing on formal appeal in accordance with the Administrative Procedure Act, Section 24-4-105, C.R.S. The rights of the parties include:
  - 1. Each party shall have the right to present his or her case or defense by oral and documentary evidence, to submit rebuttal evidence, and to conduct cross-examination.
  - 2. Subject to these rights and requirements, where a hearing will be expedited and the interest of the parties will not be subsequently prejudiced thereby, the Administrative Law Judge may receive all or part of the evidence in written form or by oral stipulations.

3. Hearings will be conducted at a site convenient to the appellant. A telephonic hearing may be conducted as an alternative to a face-to-face hearing if requested by either party. If either party requests a face-to-face hearing, the written request for a face-to-face hearing must be filed with the OAC and the other party at least ten (10) calendar days before the scheduled hearing.
- E. At the conclusion of the hearing, unless the Administrative Law Judge allows additional time to submit documentation, the Administrative Law Judge shall take the matter under advisement. After considering all the relevant evidence presented by the parties, the Administrative Law Judge shall render an Initial Decision for review by the Colorado Department of Human Services, Office of Appeals.
- F. The Initial Decision shall uphold, modify or reverse DVR's determination affecting a provision of vocational rehabilitation services of an applicant or eligible individual or the eligibility for services.
- G. The initial decision shall be rendered within thirty (30) calendar days of the completion of the hearing.
- H. When an appellant fails to appear at a duly scheduled hearing, having been given proper notice, without having given timely advance notice to the Administrative Law Judge of acceptable good cause for inability to appear at the hearing at the time, date and place specified in the notice of hearing, then the appeal shall be considered abandoned and the Administrative Law Judge shall enter an Initial Decision dismissing appeal. In accordance with the procedures set forth in Section 9.103.6, the Office of Appeals may reinstate the appeal for good cause shown by the Appellant.

#### **9.103.6 State Department Office of Appeals Functions [Rev. eff. 10/1/14]**

- A. Review of the Initial Decision and hearing record and entry of the final agency decision shall be pursuant to State rules at Sections 3.850.72 - 3.850.73 (9 CCR 2503-8).
- B. Review shall be conducted by a state adjudicator in the Office of Appeals not directly involved in any prior review of DVR's determination affecting a provision of vocational rehabilitation services of an applicant or eligible individual.
- C. The Final Agency Decision shall advise an applicant or eligible individual of his/her right to seek judicial review in the State District Court, City and County of Denver, if the appellant had timely filed exceptions to the Initial Decision.
- D. If an applicant or eligible individual seeks judicial review of the Final Agency Decision, DVR shall be responsible for defending the final agency decision on judicial review.

#### **9.104 ELIGIBILITY**

##### **9.104.1 Determination of Eligibility [Rev. eff. 10/1/14]**

- A. An assessment shall be conducted with each applicant to determine eligibility.

Eligibility criteria for vocational rehabilitation services requires that:

1. The individual has a physical or mental impairment documented by qualified personnel. For purposes of this eligibility criteria, DVR considers "qualified personnel" to be individuals, practitioners or organizations that are licensed and regulated by the Colorado Department of Regulatory Agencies to determine the existence of an impairment for their specific area of medical or psychological practice, or who otherwise meet established state or national licensing and certification requirements for that area of practice. In addition, the Social Security Administration and education officials responsible for the

public education of students with disabilities are considered by DVR to be qualified personnel for this eligibility criterion;

2. The impairment constitutes or results in a substantial impediment to employment that is consistent with the individual's abilities and capabilities;
  3. The individual requires vocational rehabilitation services to prepare for, secure, retain or regain employment consistent with his/her unique strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice; and,
  4. The Division of Vocational Rehabilitation (DVR) presumes that an applicant who meets all other eligibility criteria can benefit in terms of an employment outcome from the provision of vocational rehabilitation services. If DVR questions whether the individual's disability is too severe for him/her to benefit from services, clear and convincing evidence shall be obtained through the provision of trial work experiences and/or extended evaluation. Evidence shall be documents and used to determine eligibility or ineligibility.
- B. The length of time between application and eligibility shall not exceed sixty (60) calendar days unless a period of trial work experience and/or extended evaluation is required or unless the counselor and applicant agree that exceptional circumstances beyond the agency's control preclude determining eligibility within sixty calendar days. Once eligibility is determined, the client shall be provided with an agency-approved letter to document his/her eligibility and assigned priority for services.

#### **9.104.2 Presumptive Eligibility [Rev. eff. 10/1/14]**

An applicant who is determined to be eligible for Supplemental Security Income (SSI) and/or Social Security Disability Insurance (SSDI) benefits (based on his/her own disability including blindness) is presumed to meet the eligibility requirements. Verification of eligibility for SSI/SSDI benefits is sufficient to establish that DVR eligibility criteria are met unless the presumption of benefit in terms of an employment outcome is questionable due to the severity of the disability(ies), which may require trial work experiences and/or extended evaluation.

#### **9.104.3 Trial Work Experiences [Rev. eff. 10/1/14]**

Prior to determining that an individual is ineligible because he/she does not meet the eligibility criteria at 9.104.1, A, 4, trial work experiences shall be provided. Trial work experiences shall provide an exploration of the individual's abilities, capabilities and capacity to perform in realistic work settings to determine whether or not there is clear and convincing evidence that an employment outcome is precluded by the severity of an individual's disability and an ineligibility decision is appropriate.

DVR shall develop a written plan to periodically assess the individual's abilities, capabilities, and capacity to perform in work situations through the use of trial work experiences, which shall be provided in the most integrated setting(s) possible, consistent with the informed choice and rehabilitation needs of the individual. The counselor and the individual shall jointly develop the plan for the trial work experiences.

Trial work experiences must be of sufficient variety and over a sufficient period of time to determine that:

- A. There is sufficient evidence to conclude that the individual can benefit from the provision of vocational rehabilitation services in terms of an employment outcome; or,
- B. There is clear and convincing evidence that the individual is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome due to the severity of the individual's disability.

#### **9.104.4 Extended Evaluation [Rev. eff. 10/1/14]**

If an individual with a significant disability cannot take advantage of trial work experiences or if options for trial work experiences have been exhausted before the DVR counselor is able to determine eligibility or ineligibility, an extended evaluation shall be provided under a written extended evaluation plan. The service record must document the need for extended evaluation.

#### **9.105 SEVERITY OF DISABILITY [Rev. eff. 10/1/14]**

The assessment for determining eligibility and identifying vocational rehabilitation needs shall establish an individual's priority for services, based upon whether the individual's disability is most significant, significant, or neither.

A. An individual with a most significant disability is one:

1. Who has been verified to be presumptively eligible and who has a severe physical or mental impairment that seriously limits three or more functional capacities (mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome; and, whose vocational rehabilitation can be expected to require the provision of two or more vocational rehabilitation services for at least five months; or,
2. Who has a severe physical or mental impairment that seriously limits three or more functional capacities (mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome; and, whose vocational rehabilitation can be expected to require the provision of two or more vocational rehabilitation services for at least five months.

B. An individual with a significant disability is one:

1. Who has been verified to be presumptively eligible; and/or,
2. Who has a severe physical or mental impairment that seriously limits one or two functional capacity areas (mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome; and, whose vocational rehabilitation can be expected to require the provision of two or more vocational rehabilitation services for at least five months.

#### **9.106 PROVISION OF VOCATIONAL REHABILITATION SERVICES [Rev. eff. 10/1/14]**

Services shall be provided to:

- A. Applicants and eligible individuals to determine eligibility and severity of disability.
- B. Eligible individuals to determine a vocational goal and identify the nature and scope of the services necessary to reach that vocational goal.
- C. Under an Individualized Plan for Employment (IPE) to assist an individual in preparing for, securing, retaining, or regaining an employment outcome.

Services that are provided to applicants and eligible individuals shall be necessary, appropriate, and purchased at least possible cost. A service is considered necessary only if it is essential to assess an individual's eligibility and severity of disability, to establish his/her vocational rehabilitation needs, to overcome or circumvent an identified vocational impediment(s), and to attain the individual's chosen employment outcome. Once an IPE has been developed, services shall be provided in the most

integrated settings as outlined on the IPE. A service is considered appropriate if it is of sufficient quality to fully meet the individual's particular needs and circumstances.

#### **9.106.1 Contact [Eff. 10/1/14]**

Every applicant and client shall be contacted by a DVR staff member at least once every thirty (30) days. The purpose of this contact is to promote an interactive process and ongoing case progress. A summary of the nature of this interaction shall be documented in the client record.

### **9.107 UTILIZATION OF REHABILITATION FUNDS**

#### **9.107.1 Expenditure of Rehabilitation Funds [Rev. eff. 10/1/14]**

##### **A. Payment for Services**

Necessary and appropriate services provided to applicants and eligible individuals shall be procured at the least possible cost to the Division of Vocational Rehabilitation (DVR). All services and goods shall be authorized prior to, or at the initiation of, the delivery of the service or good unless the service record documents that prior written authorization is not possible. All issued authorizations shall be printed and contained in the client record. All goods shall be procured in compliance with state purchasing procedures.

##### **B. Estimation of Costs**

All completed Individualized Plans for Employment (IPE) shall contain estimates of anticipated agency costs and/or contributions for goods and services listed.

##### **C. Regardless of the vocation chosen, DVR excludes supporting a business that does not comply with all relevant state, federal, and local laws and regulations.**

##### **D. Fee Schedule**

Services must be authorized and payments approved in accordance with current agency fee schedules. Fees exceeding the established maximum may be authorized and paid only when the specific service is not available at the established rate or when the service available at the established rate is not adequate to meet the individual's rehabilitation needs.

##### **E. Maintenance Payments**

Maintenance is monetary support provided to an individual for expenses, such as food and shelter, that are in excess of the individual's normal expenses that are created by participation in an assessment for determining eligibility and vocational rehabilitation needs or the individual's receipt of services under an IPE.

##### **F. Payment for Transportation**

Transportation is provided to an individual if necessary to participate in DVR services. Public transportation is encouraged unless the individual's impairment-related limitations prevent use of public transportation. If the individual chooses to use his/her own vehicle when public transportation is available and accessible, reimbursement for mileage may be provided up to the cost of public transportation.

To receive reimbursement, the individual or his/her driver shall have a valid driver's license, possess an active insurance policy to drive the automobile, and use an automobile that is appropriately licensed and registered. Appropriate documentation shall be provided to DVR to

support the reimbursement is related to services necessary for eligibility determination or in connection with the provision of services.

#### G. Purchase of Technological Aids and Devices

Purchase of telecommunications, sensory, and other technological or assistive aids and devices requiring individualized prescriptions and fittings shall be allowable only when the prescriptions and fittings are performed by individuals licensed or certified in accordance with state laws.

#### H. Use of Supported Employment (Title VI -B) Funds

Supported employment funds may only be used for the implementation of rehabilitation programs for individuals with the most significant disabilities eligible for supported employment.

#### I. State Property

Goods purchased for use by an eligible individual in a training program, trade or business remain the property of the State of Colorado until successful closure from DVR occurs.

1. Issue of State Property. When such item(s) are issued to a client, written acknowledgment of receipt of the equipment, indicating state ownership, shall be obtained from the client.
2. Recovery of State Property. State property shall be recovered from clients upon termination of programs that do not result in successfully rehabilitated closures.
3. Re-Issue of State Property. Items recovered in accordance with this policy shall be retained in the field office to be re-issued to other individuals who may have need of such items.

### **9.107.2 Applicant or Eligible Individual Financial Participation [Rev. eff. 10/1/14]**

Payment for most services or goods for individuals other than SSI/SSDI recipients is based upon the economic need of the individual and the finances of the family unit. DVR shall conduct a determination of the individual's economic need prior to the preparation and approval of an Individualized Plan for Employment, a Business Exploration Agreement, Trial Work Experience Plan or Extended Evaluation Plan whenever the plan contains a vocational rehabilitation service that is not specifically exempted from financial participation. An individual who receives Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) is exempt from the determination of economic need and from participating financially in his/her rehabilitation plan.

- A. Re-determinations of the individual's economic need shall be conducted at least annually and within forty-five (45) days after any other time when the individual's financial circumstances change.
- B. All economic need determinations shall be documented and require an individual's proof of financial status. Documentation accepted as proof of financial status shall be defined in writing by DVR. The applicant or eligible individual shall provide proof of financial status unless the service record documents that there is no proof of financial status available and/or it cannot be obtained. If proof of financial status cannot be obtained, the statement of the applicant or eligible individual and/or member of his/her family shall establish data used to complete economic need determinations.
- C. The family unit consists of the applicant or eligible individual, the spouse of the individual, and any other persons whom the individual claims as a dependent for income tax purposes. When the individual is dependent upon his/her parents, the parents and persons for whom the parents are financially responsible shall be considered part of the family unit. An individual who is living with his/her parents is considered a dependent unless the parents have not claimed the individual as a



dependent for income tax purposes for the tax year previous to the financial need determination and do not intend to claim the individual as a dependent in current and future years.

Exception to the family unit may occur if the service record documents a clear indication that the individual is not receiving financial support from the family unit. When this occurs, he/she may be considered his/her own family unit regardless of dependent status for income tax purposes.

- D. The financial need analysis shall determine economic need and consider income and net resources as well as the allowable monthly deductions of the entire family unit. Standardized allowances for normal living costs are determined by the size of the family unit.
- E. Financial participation of the individual or completion of a financial need analysis is not required for the following vocational rehabilitation services:
  - 1. Assessment services to determine eligibility and vocational rehabilitation needs, except for services that are considered supportive and goods and services which are provided under a Trial Work Experience Plan or an Extended Evaluation Plan;
  - 2. Vocational rehabilitation counseling and guidance;
  - 3. Referral services;
  - 4. Professional fees to providers of vocational adjustment and personal adjustment training, independent living skills training, job coaching, on-the-job training and job seeking skills training;
  - 5. Interpreter services and note-taking services for individuals who are deaf;
  - 6. Reader services and note-taking services for individuals who are blind;
  - 7. Personal assistance services;
  - 8. Auxiliary aids needed for an individual with a disability to participate in the vocational rehabilitation program;
  - 9. Job-related services; and,
  - 10. Any service or good furnished to an individual for whom the DVR counselor has evidence of current eligibility for SSI and/or SSDI benefits for disability or blindness.

#### **9.108 CASE CLOSURE [Rev. eff. 10/1/14]**

The DVR counselor may close a service record for an applicant or eligible individual for any of the reasons found in Sections 9.108.1 through 9.108.3.

##### **9.108.1 Successful Closure Criteria [Eff. 10/1/14]**

The case record of an individual who receives services that lead to an employment outcome shall be closed when the individual achieves the criteria for successful closure.

##### **9.108.2 Ineligibility Closure Reasons [Eff. 10/1/14]**

If it is determined that an applicant is ineligible for services or the individual receiving services is no longer eligible for services, the case record shall be closed.

### **9.108.3 Other Closure [Eff. 10/1/14]**

Case records may be closed for other reasons, in accordance with 34 CFR Part 361.43 (January 2001). No amendments or later editions are incorporated. Copies are available for purchase at the Government Bookstore, Federal Office Building, 1961 Stout Street, Denver, Colorado 80294. A copy is available for inspection during regular business hours at the Colorado Department of Human Services, Division of Vocational Rehabilitation, Office of the Director, 1575 Sherman Street, Denver, Colorado 80203-1714; or any state publications depository library.

Other reasons include, but are not limited to, when the individual:

- A. Is no longer interested in services;
- B. Is unavailable for services;
- C. Violates an agency safety or service delivery policy;
- D. Is employed in a non-integrated setting; or,
- E. Is employed and receiving less than minimum wage.

\*\*\*\*\*

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**State of Colorado**  
**Department of Law**  
**Office of the Attorney General**

Tracking number: 2014-00602

**Opinion of the Attorney General rendered in connection with the rules adopted by the**  
#14-3-10-1: Implement New Case Management System, Align Service Delivery, and Correct Audit Findings

**on 08/08/2014**

12 CCR 2513-1

RULE MANUAL VOLUME 9, REHABILITATION SERVICES

The above-referenced rules were submitted to this office on 08/15/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

**John W. Suthers**  
Attorney General  
by Daniel D. Domenico  
Solicitor General

August 22, 2014 16:20:51

## **Emergency Rules Adopted**

### **Department**

Department of Revenue

### **Agency**

Marijuana Enforcement Division

### **CCR number**

1 CCR 212-1

### **Rule title**

1 CCR 212-1 RULES REGARDING THE SALES, MANUFACTURING AND  
DISPENSING OF MEDICAL MARIJUANA 1 - eff 08/01/2014

### **Effective date**

08/01/2014

## **Basis and Purpose – M 103**

The statutory authority for this rule is found at subsection 12-43.3-202(1)(b)(I), C.R.S. The purpose of this rule is to provide necessary definitions of terms used throughout the rules. Defined terms are capitalized where they appear in the rules, to let the reader know to refer back to these definitions. When a term is used in a conventional sense, and not intended to be a defined term, it is not capitalized.

With regard to the definition of Child-Resistant, the State Licensing Authority relied extensively upon written commentary provided by a public health agency within a Colorado hospital, which had conducted a health impact assessment of packaging regulations, looking at accidental ingestion of medical marijuana. The assessment was supported by others in the public, including industry representatives and a physician specializing in medical toxicology.

With regard to the definition of Restricted Access Area, the State Licensing Authority relied extensively upon written commentary provided by a consumer advocate.

## **M 103 – Definitions**

Definitions. The following definitions of terms, in addition to those set forth in section 12-43.3-104, C.R.S., shall apply to all rules promulgated pursuant to the Medical Code, unless the context requires otherwise:

"Advertising" means the act of providing consideration for the publication, dissemination, solicitation, or circulation, visual, oral, or written, to induce directly or indirectly any Person to patronize a particular a Medical Marijuana Business, or to purchase particular Medical Marijuana or a Medical Marijuana-Infused Product. "Advertising" includes marketing, but does not include packaging and labeling. "Advertising" proposes a commercial transaction or otherwise constitutes commercial speech.

"Alarm Installation Company" means a Person engaged in the business of selling, providing, maintaining, servicing, repairing, altering, replacing, moving or installing a Security Alarm System in a Licensed Premises.

"Applicant" means a Person that has submitted an application pursuant to these rules that was accepted by the Division for review but has not been approved or denied by the State Licensing Authority.

"Associated Key License" means an Occupational License for an individual who is an Owner of the Medical Marijuana Business.

"Batch Number" means any distinct group of numbers, letters, or symbols, or any combination thereof, assigned by a Medical Marijuana Optional Premises Cultivation Operation or Medical Marijuana-Infused Products Manufacturer to a specific Harvest Batch or Production Batch of Medical Marijuana.

"Certified Industrial Hygienist" means an individual who holds a valid and current certification from the American Board of Industrial Hygiene.

"Child-Resistant" means special packaging that is:

- a. Designed or constructed to be significantly difficult for children under five years of age to open and not difficult for normal adults to use properly as defined by 16 C.F.R. 1700.20 (1995) and ASTM classification standard D3475-13, <http://www.astm.org/Standards/D3475.htm> . Note that this rule does not include

any later amendments or editions to the Code of Federal Regulations or the ASTM classification standards. The Division has maintained a copy of the applicable federal regulation and ASTM classification standard, which are available to the public.

- b. Opaque so that the packaging does not allow the product to be seen without opening the packaging material;
- c. Resealable for any product intended for more than a single use or containing multiple servings, and
- d. Labeled properly as required by the M 1000 series.

"Container" means the sealed package in which Medical Marijuana or a Medical Marijuana-Infused Product is placed for sale to a patient and that has been labeled according to the requirements set forth in Rules M 1002 *et. seq.*

"Denied Applicant" means any Person whose application for licensure pursuant to the Medical Code has been denied.

"Department" means the Colorado Department of Revenue.

"Director" means the Director of the Marijuana Enforcement Division.

"Division" means the Marijuana Enforcement Division.

"Division Approved Sampler" means an individual who has completed all approval requirements, which may include but need not be limited to training, examination, and continuing education, and has a current approval from the Division to collect and transport Samples.

"Edible Medical Marijuana-Infused Product" means any Medical Marijuana-Infused Product that is intended to be consumed orally, including but not limited to, any type of food, drink, or pill.

"Executive Director" means the Executive Director of the Department of Revenue.

"Exit Package" means a sealed Container or package provided at the retail point of sale, in which any Medical Marijuana or Medical Marijuana-Infused Product already within a Container are placed.

"Final Agency Order" means an Order of the State Licensing Authority issued in accordance with the Medical Code and the State Administrative Procedure Act. The State Licensing Authority will issue a Final Agency Order following review of the Initial Decision and any exceptions filed thereto or at the conclusion of the declaratory order process. A Final Agency Order is subject to judicial review.

"Flammable Solvent" means a liquid that has a flash point below 100 degrees Fahrenheit.

"Flowering" means the reproductive state of *Cannabis* in which the plant is in a light cycle intended to stimulate production of flowers, trichomes, and cannabinoids characteristic of marijuana.

"Food-Based Medical Marijuana Concentrate" means a Medical Marijuana Concentrate that was produced by extracting cannabinoids from Medical Marijuana through the use of propylene glycol, glycerin, butter, olive oil or other typical cooking fats.

"Good Cause" for purposes of denial of an initial, renewal or reinstatement license application or certification, or for purposes of discipline of a license or certification, means:

- a. The Licensee or Applicant has violated, does not meet, or has failed to comply with any of the terms, conditions, or provisions of the Medical Code, any rules promulgated pursuant it, or any supplemental relevant state or local law, rule, or regulation;
- b. The Licensee or Applicant has failed to comply with any special terms or conditions that were placed upon the license pursuant to an order of the State Licensing Authority or the relevant local licensing authority; or
- c. The Licensee's or the Applicant's Licensed Premises have been operated in a manner that adversely affects the public health or welfare or the safety of the immediate neighborhood in which the establishment is located.

"Good Moral Character" means an individual who has a personal history demonstrating honesty, fairness, and respect for the rights of others and for the law.

"Harvest Batch" means a specifically identified quantity of processed Medical Marijuana that is uniform in strain, cultivated utilizing the same Pesticide and other agricultural chemicals and harvested at the same time.

"Identity Statement" means the name of the business as it is commonly known and used in any Advertising materials.

"Immature plant" means a nonflowering Retail Marijuana or Medical Marijuana plant that is no taller than eight inches and no wider than eight inches produced from a cutting, clipping or seedling.

"Initial Decision" means a decision of a hearing officer in the Department following a licensing, disciplinary, or other administrative hearing.

"Key License" means an Occupational License for an individual who performs duties that are key to the Medical Marijuana Business' operation and have the highest level of responsibility. Examples of individuals who need this type of license include, but are not limited to, managers and bookkeepers but do not include an Owner.

"Licensed Premises" means the premises specified in an application for a license pursuant to the Medical Code that are owned or in possession of the Licensee and within which the Licensee is authorized to cultivate, manufacture, distribute, sell, or test Medical Marijuana in accordance with the provisions of the Medical Code and these rules.

"Licensee" means any Person licensed or registered pursuant to the Medical Code, including an Occupational Licensee.

"Limited Access Area" means a building, room, or other contiguous area upon the Licensed Premises where Medical Marijuana is grown, cultivated, stored, weighed, packaged, sold, or processed for sale, under control of the Licensee.

"Limit of Detection" or "LOD" means the lowest quantity of a substance that can be distinguished from the absence of that substance (a blank value) within a stated confidence limit (generally 1%).

"Limit of Quantitation" or "LOQ" means the lowest concentration at which the analyte can not only be reliably detected but at which some predefined goals for bias and imprecision are met.

"Material Change" means any change that would require a substantive revision to a Medical Marijuana Business's standard operating procedures for the cultivation of Medical Marijuana or the production of a Medical Marijuana Concentrate or Medical Marijuana-Infused Product.

"MITS" means Marijuana Inventory Tracking Solution.

"MITS Trained Administrator" means an Owner or an Occupational Licensed Licensee of a Medical Marijuana Business who has attended and successfully completed MITS training and who has completed any additional training required by the Division.

"MITS User" means an Owner or an occupationally licensed Medical Marijuana Business employee who is granted MITS User account access for the purposes of conducting inventory tracking functions in the MITS system, who has been successfully trained by MITS Trained Administrator(s) in the proper and lawful use MITS, and who has completed any additional training required by the Division.

"Medical Code" means the Colorado Medical Marijuana Code found at sections 12-43.3-101 *et seq.*, C.R.S.

"Medical Marijuana" means marijuana that is grown and sold pursuant to the Medical Code and includes seeds and Immature Plants.

"Medical Marijuana Business" means a licensed Medical Marijuana Center, a Medical Marijuana-Infused Products Manufacturer, or an Optional Premises Cultivation Operation.

"Medical Marijuana Center" means a Person that is licensed pursuant to the Medical Code to operate a business as described in section 12-43.3-402, C.R.S., and that sells Medical Marijuana to registered patients or primary caregivers as defined in Article XVIII, Section 14 of the Colorado Constitution, but is not a primary caregiver.

"Medical Marijuana Concentrate" means a specific subset of Medical Marijuana that was produced by extracting cannabinoids from Medical Marijuana. Categories of Medical Marijuana Concentrate include Water-Based Medical Marijuana Concentrate, Food-Based Medical Marijuana Concentrate and Solvent-Based Medical Marijuana Concentrate.

"Medical Marijuana-Infused Product" means a product infused with Medical Marijuana that is intended for use or consumption other than by smoking, including but not limited to edible products, ointments, and tinctures. Such products shall not be considered a food or drug for purposes of the "Colorado Food and Drug Act," part 4 of Article 5 of Title 25, C.R.S.

"Medical Marijuana-Infused Products Manufacturer" means a Person licensed pursuant to the Medical Code to operate a business as described in section 12-43.3-404, C.R.S.

"Monitoring" means the continuous and uninterrupted attention to potential alarm signals that could be transmitted from a Security Alarm System located at a Medical Marijuana Business Licensed Premises, for the purpose of summoning a law enforcement officer to the premises during alarm conditions.

"Monitoring Company" means a Person in the business of providing Monitoring services for a Medical Marijuana Business.



"Notice of Denial" means a written statement from the State Licensing Authority, articulating the reasons or basis for denial of a license application.

"Occupational License" means a license granted to an individual by the State Licensing Authority pursuant to section 12-43.3-401, C.R.S. An Occupational License may be an Associated Key License, a Key License or a Support License.

"Opaque" means that the packaging does not allow the product to be seen without opening the packaging material.

"Optional Premises Cultivation Operation" means a Person licensed pursuant to the Medical Code to operate a business as described in section 12-43.3-403, C.R.S.

"Order to Show Cause" means a document from the State Licensing Authority alleging the grounds for imposing discipline against a Licensee's license.

"Owner" means the Person or Persons whose beneficial interest in the license is such that they bear risk of loss other than as an insurer, and have an opportunity to gain profit from the operation or sale of the establishment. Each individual Owner must have an Associated Key License. Owner includes any other Person that qualifies as an Owner pursuant to Rule M 204.

"Person" means a natural person, partnership, association, company, corporation, limited liability company, or organization, or a manager, agent, owner, director, servant, officer, or employee thereof; except that "Person" does not include any governmental organization.

"Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest or any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant; except that the term "pesticide" shall not include any article that is a "new animal drug" as designated by the United States Food and Drug Administration."

"Production Batch" means (a) any amount of Medical Marijuana Concentrate of the same category and produced using the same extraction methods, standard operating procedures and an identical group of Harvest Batch(es) of Medical Marijuana; or (b) any amount of Medical Marijuana Product of the same exact type, produced using the same ingredients, standard operating procedures and the same Production Batch(es) of Medical Marijuana Concentrate.

"Professional Engineer" means an individual who is licensed by the State of Colorado as a professional engineer pursuant to 12-25-101 et. seq., C.R.S.

"Proficiency Testing Samples" means performing the same analyses on the same Samples and comparing results to ensure the Samples are homogenous and stable, and also that the set of Samples analyzed are appropriate to test and display similarities and differences in results.

"Propagation" means the reproduction of Medical Marijuana plants by seeds, cuttings or grafting.

"RFID" means Radio Frequency Identification.

"Resealable" means that the package maintains its Child-Resistant effectiveness for multiple openings.

"Respondent" means a person who has filed a petition for declaratory order that the State Licensing Authority has determined needs a hearing or legal argument or a Licensee who is subject to an Order to Show Cause.

"Restricted Access Area" means a designated and secure area within a Licensed Premises in a Medical Marijuana Center where Medical Marijuana and Medical Marijuana-Infused Product are sold, possessed for sale, and displayed for sale, and where no one without a valid patient registry card is permitted.

"Retail Code" means the Colorado Retail Marijuana Code, found at sections 12-43.4-101 *et seq.*, C.R.S.

"Retail Marijuana" means all parts of the plant of the genus *cannabis* whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana concentrate that is cultivated, manufactured, distributed, or sold by a licensed Retail Marijuana Establishment. "Retail Marijuana" does not include industrial hemp, nor does it include fiber produced from stalks, oil, or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.

"Retail Marijuana Concentrate" means a specific subset of Retail Marijuana that was produced by extracting cannabinoids from Retail Marijuana. Categories of Retail Marijuana Concentrate include Water-Based Retail Marijuana Concentrate, Food-Based Retail Marijuana Concentrate and Solvent-Based Retail Marijuana Concentrate.

"Retail Marijuana Cultivation Facility" means an entity licensed to cultivate, prepare, and package Retail Marijuana and sell Retail Marijuana Retail Marijuana Establishments, but not to consumers.

"Retail Marijuana Establishment" means a Retail Marijuana Store, a Retail Marijuana Cultivation Facility, a Retail Marijuana Products Manufacturing Facility, or a Retail Marijuana Testing Facility.

"Retail Marijuana Product" means a product that is comprised of Retail Marijuana and other ingredients and is intended for use or consumption, such as, but not limited to, edible product, ointments and tinctures.

"Retail Marijuana Products Manufacturing Facility" means an entity licensed to purchase Retail Marijuana; manufacture, prepare, and package Retail Marijuana Product; and sell Retail Marijuana and Retail Marijuana Product to other Retail Marijuana Products Manufacturing Facilities and to Retail Marijuana Stores, but not to consumers.

"Retail Marijuana Store" means an entity licensed to purchase Retail Marijuana from a Retail Marijuana Cultivation Facility and to purchase Retail Marijuana Product from a Retail Marijuana Products Manufacturing Facility and to sell Retail Marijuana and Retail Marijuana Product to consumers.

"Retail Marijuana Testing Facility" means a public or private laboratory licensed and certified, or approved by the Division, to conduct research and analyze Retail Marijuana, Retail Marijuana Products and Retail Marijuana Concentrate for contaminants and potency.

"Sample" means anything collected by Division personnel or a Division Approved Sampler from a Medical Marijuana Business that is provided to a Retail Marijuana Testing Facility in accordance with Rule M 701 – Vendor Registration and Occupational License for Medical Marijuana Testing and Research. The following is a non-exhaustive list of types of Samples: Medical Marijuana, Medical Marijuana-Infused Product, Medical Marijuana Concentrate, soil, growing medium, water, solvent or swab of a counter or equipment.

"Security Alarm System" means a device or series of devices, intended to summon law enforcement personnel during, or as a result of, an alarm condition. Devices may include hard-

wired systems and systems interconnected with a radio frequency method such as cellular or private radio signals that emit or transmit a remote or local audible, visual, or electronic signal; motion detectors, pressure switches, duress alarms (a silent system signal generated by the entry of a designated code into the arming station to indicate that the user is disarming under duress); panic alarms (an audible system signal to indicate an emergency situation); and hold-up alarms (a silent system signal to indicate that a robbery is in progress).

"Shipping Container" means any container or wrapping used solely for the transport of Medical Marijuana or Medical Marijuana-Infused Product in bulk, or in a quantity for other Medical Marijuana Businesses.

"Solvent-Based Medical Marijuana Concentrate" means a Medical Marijuana Concentrate that was produced by extracting cannabinoids from Medical Marijuana through the use of a solvent approved by the Division pursuant to Rule M 605.

"State Licensing Authority" means the authority created for the purpose of regulating and controlling the licensing of the cultivation, manufacture, distribution, and sale of Medical Marijuana and Retail Marijuana in Colorado, pursuant to section 12-43.3-201, C.R.S.

"Support License" means a license for an individual who performs duties that support the Medical Marijuana Business' operations. While a Support Licensee must conduct himself or herself professionally, he or she has limited decision making authority and always fall under the supervision of an Associated Key Licensee. Examples of individuals who need this type of license include, but are not limited to, sales clerks or cooks.

"THC" means tetrahydrocannabinol.

"THCA" means tetrahydrocannabinolic acid.

"Test Batch" means a group of Samples that are collectively submitted to a Retail Marijuana Testing Facility for testing purposes in accordance with Rule M 701 – Vendor Registration and Occupational License for Medical Marijuana Testing and Research. A Test Batch may not be a combination of any two or three of the following: Medical Marijuana, Medical Marijuana Concentrate or Medical Marijuana Product.

"Unrecognizable" means marijuana or *Cannabis* plant material rendered indistinguishable from any other plant material.

"Vegetative" means the state of the *Cannabis* plant during which plants do not produce resin or flowers and are bulking up to a desired production size for Flowering.

"Water-Based Medical Marijuana Concentrate" means a Medical Marijuana Concentrate that was produced by extracting cannabinoids from Medical Marijuana through the use of only water, ice or dry ice.

## **Basis and Purpose – M 402**

The statutory authority for this rule is found at subsections 12-43.3-202(1)(b)(I), 12-43.3-202(1)(e), 12-43.3-202(2)(a)(XVI), 12-43.3-202(2)(a)(XX), 12-43.3-310(7), and 12-43.3-310(4), C.R.S. The purpose of this rule is to establish that a Medical Marijuana Center can only grow Medical Marijuana in its Optional Premises Cultivation Operation for a patient that has designated that Medical Marijuana Center as being his or her primary center. The rule also helps to ensure that Medical Marijuana plants designated to a particular patient are only being grown at one Medical Marijuana Center.

## **M 402 – Registration of a Primary Medical Marijuana Center**

- A. Patient Designation Required . A Medical Marijuana Center may only grow Medical Marijuana plants for patients who have designated the Medical Marijuana Center as being his or her primary center..
- B. Change Only Allowed Every 30 Days . A Medical Marijuana Center shall not register a patient as being the patient's primary center if the patient has designated another Medical Marijuana Center as his or her primary center in the preceding 30 days. The Medical Marijuana Center and its employees must require a patient to sign in writing that he or she has not designated another Medical Marijuana Center as his or her primary center before growing medical marijuana plants on behalf of the patient.
- C. Required Questions . A Medical Marijuana Center must maintain a written record of the following questions and their answers at the time a patient indicates a desire to designate said center as his or her primary center:
  - 1. Questions to the patient:
    - a. Which Medical Marijuana Center is currently the patient's primary center; and
    - b. How many plants is the patient's current primary center is cultivating for that patient.
  - 2. Questions to the current primary center:
    - a. How many plants is the Medical Marijuana Center cultivating for the patient; and
    - b. How many of the patient's plants has the Medical Marijuana Center harvested.
- D. Other Requirements . The new primary center shall also maintain written authorization from the patient and any relative plant count waivers to support the number of plants designated for that patient.
- E. Violation of Public Safety. Notwithstanding the provisions in M 402 (B), it may be considered a violation of public safety for a Medical Marijuana Center and its employees to knowingly become a patient's primary center when the Medical Marijuana Center or its employees knew that the patient already had designated one or more Medical Marijuana Centers as his or her primary center.

## **Basis and Purpose – M 403**

The statutory authority for this rule is found at subsections 12-43.3-103(2)(b), 12-43.3-202(1)(b)(I), 12-43.3-202(1)(e), 12-43.3-202(2)(a)(XVI), 12-43.3-202(2)(a)(XX), 12-43.3-310(7), and 12-43.3-310(4), and section 12-43.3-201, C.R.S. The purpose of this rule is to clarify those acts that are prohibited, or limited in some fashion, by a licensed Medical Marijuana Center. This rule also restricts the amount of its inventory a Medical Marijuana Center may sell to other Medical Marijuana Businesses to 30 percent.

## **M 403 – Medical Marijuana Sales: General Limitations or Prohibited Acts**

- A. Transactions Must Occur During Statutory Business Hours . During the hours established in section 12-43.3-901(4)(I), C.R.S., Medical Marijuana may be sold to other licensed Medical Marijuana Centers or licensed Medical Marijuana-Infused Products Manufacturers, under the following conditions:

- B. 30 Percent Rule . Pursuant to section 12-43.3-402(4), C.R.S., a Medical Marijuana Center may purchase not more than thirty percent of its total on-hand medical marijuana inventory from another licensed Medical Marijuana Center in Colorado. A Medical Marijuana Center may sell no more than thirty percent of its total on-hand Medical Marijuana inventory to another Medical Marijuana Center.

Total on-hand inventory as used in section 12-43.3-402(4), C.R.S., shall only include Medical Marijuana grown on the Medical Marijuana Center's dedicated Optional Premises Cultivation Operation that has been processed and the total amount or quantity has been accounted for in the licensed Medical Marijuana Center's inventory during the previous calendar year, or in the case of a newly licensed business, its first 12 months of business. For purposes of this rule, a calendar year means January 1st to December 31st.

- C. Medical Marijuana-Infused Products Manufacturers . A Medical Marijuana Center may also contract for the manufacture of Medical Marijuana-Infused Product with Medical Marijuana-Infused Product Licensees utilizing a contract as provided for in Rule M 602 – Medical Marijuana-Infused Products Manufacturer: General or Prohibited Acts (Infused Product Contracts). Medical Marijuana distributed to a Medical Marijuana-Infused Products Manufacturer by a Medical Marijuana Center pursuant to such a contract for use solely in Medical Marijuana-Infused Product(s) that are returned to the contracting Medical Marijuana Center shall not be included for purposes of determining compliance with subsection A.
- D. Consumption Prohibited . Licensees shall not permit the consumption of marijuana or a marijuana product on the Licensed Premises.
- E. Quantity Limitations On Sales . A Medical Marijuana Center and its employees are prohibited from selling more than two ounces of Medical Marijuana or its equivalent in Medical Marijuana-Infused Product during a single sales transaction to a patient unless that patient has designated the Medical Marijuana Center as its primary center and supplied it with documentation from the patient's physician that allows the patient more than two ounces of Medical Marijuana or its equivalent in Marijuana-Infused Product. A Medical Marijuana Center is strictly prohibited from selling more than two ounces of Medical Marijuana or its equivalent in Marijuana-Infused Product to any patient who has not registered that Medical Marijuana Center as its primary center.
- F. Licensees May Refuse Sales . Nothing in these rules prohibits a Licensee from refusing to sell Medical Marijuana or Medical Marijuana-Infused Product to a patient.
- G. Storage and Display Limitations . A Medical Marijuana Center shall not display Medical Marijuana and Medical Marijuana-Infused Product outside of a designated Restricted Access Area or in a manner in which Medical Marijuana or Medical Marijuana-Infused Product can be seen from outside the Licensed Premises. Storage of Medical Marijuana and Medical Marijuana-Infused Product shall otherwise be maintained in Limited Access Areas or Restricted Access Area.
- H. Sale of Expired Product Prohibited . A Medical Marijuana Center shall not sell any expired Medical Marijuana-Infused Product.
- I. Violation Affecting Public Safety. Failure to comply with this rule may constitute a license violation affecting public safety.

### **Basis and Purpose – M 1001**

The statutory authority for this rule is found at subsections 12-43.3-202(1)(b)(I), 12-43.3-202(2)(a)(XIV), 12-43.3-202(2)(a)(XIV.5), and 12-43.3-202(2)(a)(XX), C.R.S. Extensive labeling and secure packaging of Medical Marijuana and Medical Marijuana-Infused Product is of statewide concern. The purpose of this rule, and other rules in this series, is to ensure that all Medical Marijuana and Medical Marijuana-Infused Product are sold and delivered to lawful patients in packaging that is not easily opened by children. This rule also clarifies packaging and labeling terms that will be used throughout this rule and rules in the same series to ensure that Coloradoans are adequately informed.

### **M 1001 – Packaging Requirements: General Requirements**

Packaging of Medical Marijuana and Medical Marijuana-Infused Product by a Medical Marijuana Center. A Medical Marijuana Center must ensure that all Medical Marijuana and Medical Marijuana-Infused Product is placed within a Container prior to sale to a consumer. If the Container is not Child-Resistant, the Medical Marijuana Center must place the Container within an Opaque and Resealable Exit Package that is Child-Resistant.

### **Basis and Purpose – M 1003**

The statutory authority for this rule is found at subsections 12-43.3-202(1)(b)(I), 12-43.3-202(2)(a)(XIV), 12-43.3-202(2)(a)(XIV.5), and 12-43.3-202(2)(a)(XX), C.R.S. The purpose of this rule is to ensure that each Container of Medical Marijuana and Medical Marijuana-Infused Product includes necessary and relevant labeling information for consumers.

### **M 1003 – Labeling Requirements: Specific Requirements, Medical Marijuana and Medical Marijuana-Infused Product**

- A. Labels Required . No Licensee shall sell, transfer, or give away any Medical Marijuana that does not contain a Label with a list of all ingredients, including all chemical additives, including but not limited to nonorganic pesticides, herbicides, and fertilizers that were used in its cultivation and production. The label must also list:
  - 1. The Batch Number or numbers assigned by the Optional Premises Cultivation Operation to the marijuana plant or plants from which the Medical Marijuana contained within the Container was harvested; and
  - 2. A complete list of solvents and chemicals used in the creation of any Medical Marijuana concentrate.
- B. Medical Marijuana Container Labeling Must Include the Following Information :
  - 1. The license number of the Optional Premises Cultivation Facility, if different than the Medical Marijuana Center's license number, identifying where the Medical Marijuana within the Container was grown;
  - 2. The license number of the Medical Marijuana Center that sold the Medical Marijuana to the patient;

3. The date of sale; and
4. The patient registry number of the purchaser.

C. Medical Marijuana-Infused Product Container Labeling Must Include the Following Information :

1. The license number of the Medical Marijuana Business(es) where the Medical Marijuana used to manufacture the Medical Marijuana-Infused Product within the Container was grown;
2. The license number of the Medical Marijuana Center that sold the Medical Marijuana-Infused Product to the patient;
3. The following statement: "This product is contains medical marijuana and was produced without regulatory oversight for health, safety or efficacy and there may be health risks associated with the consumption of the product."
4. For Medical Marijuana-Infused Product, the product identity and net weight statements must appear on the portion of the label displayed to the patient.
5. When a Medical Marijuana-Infused Product is made specifically for a designated patient, the label of that product shall state the patient's Medical Marijuana Registry number.
6. The list of ingredients and company name statements must be conspicuously listed on the Medical Marijuana-Infused Product package.
7. A nutrition facts panel may be required if nutritional claims are made on the label of any Medical Marijuana-Infused Product.

D. Minimum print size . The minimum print size for each of the required statements for non-infused products and for each of the required statements for Medical Marijuana-Infused Product is 1/16 inch. The size of the characters in the net weight statement is determined by the area of the principal display panel and may be greater than 1/16 inch.

# STATE OF COLORADO

## DEPARTMENT OF REVENUE

State Capitol Annex  
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## Colorado Department of Revenue Marijuana Enforcement Division

John W. Hickenlooper  
Governor

Barbara J. Brohl  
Executive Director

### Emergency Rules:

#### **Revised Rules, Medical Marijuana, 1 CCR 212-1**

Rule M 103 – Definitions

Rule M 402 - Registration of a Primary Medical Marijuana Center

Rule M 403 – Medical Marijuana Sales: General Limitations or Prohibited Acts

Rule M 1001 – Packaging Requirements: General Requirements

Rule M 1003 – Labeling Requirements: Specific Requirements, Medical Marijuana and Medical Marijuana-Infused Product

### **Statement of Emergency Justification and Adoption**

Pursuant to sections 24-4-103 and 12-43.3-202, C.R.S., I, Barbara J. Brohl, Executive Director of the Department of Revenue and State Licensing Authority, hereby adopt the aforementioned revised Medical Marijuana Rules, which are attached hereto.

Section 24-4-103(6), C.R.S., authorizes the State Licensing Authority to issue an emergency rule if the State Licensing Authority finds that the immediate adoption of the rule is imperatively necessary to comply with a state law or for the preservation of public health, safety, or welfare and compliance with the requirements of section 24-4-103, C.R.S., would be contrary to the public interest

I find that the immediate adoption of these revised rules is necessary to comply with the statutory mandates of the Medical Marijuana Code, sections 12-43.3-101 *et seq*, and to properly regulate and control the cultivation, manufacture, distribution, and sale of medical marijuana.

#### **Statutory Authority**

The statutory authority for these rules is found at subsections 12-43.3-202(1)(b)(I) and 12-43.3-202(2)(a)(XIV.5)(A) and (B), C.R.S.

#### **Purpose**

For the State Licensing Authority to effectively regulate the medical marijuana industry, the above revisions to 1 CCR 212-1 must be implemented on an emergency basis. Immediately limiting the amount of sales a medical marijuana center may make to one patient during a single transaction is necessary to

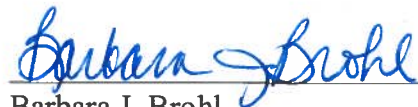


further protect the public health, safety, and welfare. Limiting such sales will help reduce diversion and over-growing of medical marijuana by the medical marijuana industry. In addition, requiring medical marijuana centers to actively monitor whether a patient can register a center as his or her primary center will reduce the growth of excess and unauthorized medical marijuana. Similarly, immediate implementation of updated packaging requirements for medical marijuana is necessary to protect the public and to comply with the mandates of the general assembly as further protecting Colorado's youth is of utmost importance.

The State Licensing Authority is adopting these rules on an emergency basis to further protect the public and more effectively regulate the medical marijuana industry.

Simultaneously with the adoption of these emergency new and revised rules, the State Licensing Authority has filed a Notice of Rulemaking to commence the permanent rulemaking process. The process will also include the opportunity for substantial stakeholder and public participation, including working group meetings, the opportunity to submit written views and comments and the opportunity for public testimony at the rulemaking hearing.

These emergency rules are effective immediately upon adoption. The prior versions of Rules M 103, M 402, M 403, M 1001, and M 1003 are hereby repealed and replaced by the attached emergency rules. These emergency rules will remain in effect until replaced by permanent rules.

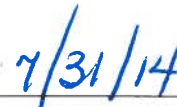


Barbara J. Brohl

Executive Director

Colorado Department of Revenue

State Licensing Authority



Date

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**State of Colorado**

**Department of Law**

**Office of the Attorney General**

Tracking number: 2014-00772

**Opinion of the Attorney General rendered in connection with the rules adopted by the  
Marijuana Enforcement Division**

**on 07/31/2014**

1 CCR 212-1

**RULES REGARDING THE SALES, MANUFACTURING AND DISPENSING OF MEDICAL  
MARIJUANA**

The above-referenced rules were submitted to this office on 07/31/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

A handwritten signature in black ink, appearing to read "JWS", is shown within a rectangular box.

**John W. Suthers**

Attorney General

by Daniel D. Domenico

Solicitor General

August 20, 2014 14:21:42

## **Emergency Rules Adopted**

**Department**

Department of Revenue

**Agency**

Marijuana Enforcement Division

**CCR number**

1 CCR 212-2

**Rule title**

1 CCR 212-2 RETAIL MARIJUANA CODE 1 - eff 08/01/2014

**Effective date**

08/01/2014

## **Basis and Purpose – R 103**

The statutory authority for this rule is found at subsection 12-43.4-202(2)(b), C.R.S. The purpose of this rule is to provide necessary definitions of terms used throughout the rules. Defined terms are capitalized where they appear in the rules, to let the reader know to refer back to these definitions. When a term is used in a conventional sense, and not intended to be a defined term, it is not capitalized.

With regard to the definition of Child-Resistant, the State Licensing Authority relied extensively upon written commentary provided by a public health agency within a Colorado hospital, which had conducted a health impact assessment of packaging regulations, looking at accidental ingestion of medical marijuana. The assessment was supported by others in the public, including industry representatives and a physician specializing in medical toxicology.

With regard to the definition of Restricted Access Area, the State Licensing Authority relied extensively upon written commentary provided by a consumer advocate.

## **R 103 – Definitions**

Definitions. The following definitions of terms, in addition to those set forth in section 12-43.4-103, C.R.S., shall apply to all rules promulgated pursuant to the Retail Code, unless the context requires otherwise:

"Advertising" means the act of providing consideration for the publication, dissemination, solicitation, or circulation, visual, oral, or written, to induce directly or indirectly any Person to patronize a particular a Retail Marijuana Establishment, or to purchase particular Retail Marijuana or a Retail Marijuana Product. "Advertising" includes marketing, but does not include packaging and labeling. "Advertising" proposes a commercial transaction or otherwise constitutes commercial speech.

"Additive" means any substance added to Retail Marijuana Product that is not a common baking or cooking item.

"Alarm Installation Company" means a Person engaged in the business of selling, providing, maintaining, servicing, repairing, altering, replacing, moving or installing a Security Alarm System in a Licensed Premises.

"Applicant" means a Person that has submitted an application pursuant to these rules that was accepted by the Division for review but has not been approved or denied by the State Licensing Authority.

"Batch Number" means any distinct group of numbers, letters, or symbols, or any combination thereof, assigned by a Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturer to a specific Harvest Batch or Production Batch of Retail Marijuana.

"Cannabinoid" means any of the chemical compounds that are the active principles of marijuana.

"Certified Industrial Hygienist" means an individual who holds a valid and current certification from the American Board of Industrial Hygiene.

"Child-Resistant" means special packaging that is:

- a. Designed or constructed to be significantly difficult for children under five years of age to open and not difficult for normal adults to use properly as defined by 16 C.F.R. 1700.20 (1995) and ASTM classification standard D3475-13,

<http://www.astm.org/Standards/D3475.htm> . Note that this rule does not include any later amendments or editions to the Code of Federal Regulations or the ASTM classification standards. The Division has maintained a copy of the applicable federal regulation and ASTM classification standard, which are available to the public.

- b. Opaque so that the packaging does not allow the product to be seen without opening the packaging material;
- c. Resealable for any product intended for more than a single use or containing multiple servings, and
- d. Labeled properly as required by the R 1000 Series.

"Container" means the sealed package in which Retail Marijuana or a Retail Marijuana Product is placed for sale to a consumer and that has been labeled according to the requirements set forth in Rules R 1002 *et. seq.*

"Denied Applicant" means any Person whose application for licensure pursuant to the Retail Code has been denied.

"Department" means the Colorado Department of Revenue.

"Director" means the Director of the Marijuana Enforcement Division.

"Division" means the Marijuana Enforcement Division.

"Division Approved Sampler" means an individual who has completed all approval requirements, which may include but need not be limited to training, examination and continuing education, and has a current approval from the Division to collect and transport Samples.

"Edible Retail Marijuana Product" means any Retail Marijuana Product which is intended to be consumed orally, including but not limited to, any type of food, drink, or pill.

"Executive Director" means the Executive Director of the Department of Revenue.

"Exit Package" means a sealed Container or package provided at the retail point of sale, in which any Retail Marijuana or Retail Marijuana Product already within a Container are placed.

"Final Agency Order" means an Order of the State Licensing Authority issued in accordance with the Retail Code and the State Administrative Procedure Act. The State Licensing Authority will issue a Final Agency Order following review of the Initial Decision and any exceptions filed thereto or at the conclusion of the declaratory order process. A Final Agency Order is subject to judicial review.

"Flammable Solvent" means a liquid that has a flash point below 100 degrees Fahrenheit.

"Flowering" means the reproductive state of *Cannabis* in which the plant is in a light cycle intended to stimulate production of flowers, trichomes, and cannabinoids characteristic of marijuana.

"Food-Based Retail Marijuana Concentrate" means a Retail Marijuana Concentrate that was produced by extracting cannabinoids from Retail Marijuana through the use of propylene glycol, glycerin, butter, olive oil or other typical cooking fats.

"Good Cause" for purposes of denial of an initial, renewal, or reinstatement of a license application, means:

- a. The Licensee or Applicant has violated, does not meet, or has failed to comply with any of the terms, conditions, or provisions of the Retail Code, any rules promulgated pursuant to it, or any supplemental relevant state or local law, rule, or regulation;
- b. The Licensee or Applicant has failed to comply with any special terms or conditions that were placed upon the license pursuant to an order of the State Licensing Authority or the relevant local jurisdiction; or
- c. The Licensee's Licensed Premises have been operated in a manner that adversely affects the public health or welfare or the safety of the immediate neighborhood in which the establishment is located.

"Good Moral Character" means an individual who has a personal history demonstrating honesty, fairness, and respect for the rights of others and for the law.

"Harvest Batch" means a specifically identified quantity of processed Retail Marijuana that is uniform in strain, cultivated utilizing the same Pesticide and other agricultural chemicals and harvested at the same time.

"Identity Statement" means the name of the business as it is commonly known and used in any Advertising.

"Immature plant" means a nonflowering Retail Marijuana or Medical Marijuana plant that is no taller than eight inches and no wider than eight inches produced from a cutting, clipping or seedling.

"Initial Decision" means a decision of a hearing officer in the Department following a licensing, disciplinary, or other administrative hearing. Either party may file exceptions to the Initial Decision. The State Licensing Authority will review the Initial Decision and any exceptions filed thereto, and will issue a Final Agency Order.

"Licensed Premises" means the premises specified in an application for a license pursuant to the Retail Code that are owned or in possession of the Licensee and within which the Licensee is authorized to cultivate, manufacture, distribute, sell, or test Retail Marijuana in accordance with the provisions of the Retail Code and these rules.

"Licensee" means any Person licensed pursuant to the Retail Code or, in the case of an Occupational License Licensee, any individual licensed pursuant to the Retail Code or Medical Code.

"Limited Access Area" means a building, room, or other contiguous area upon the Licensed Premises where Retail Marijuana is grown, cultivated, stored, weighed, packaged, sold, or processed for sale, under control of the Licensee.

"Limit of Detection" or "LOD" means the lowest quantity of a substance that can be distinguished from the absence of that substance (a blank value) within a stated confidence limit (generally 1%).

"Limit of Quantitation" or "LOQ" means the lowest concentration at which the analyte can not only be reliably detected but at which some predefined goals for bias and imprecision are met.

"Liquid Edible Retail Marijuana Product" means an Edible Retail Marijuana Product that is a liquid beverage or food-based product and intended to be consumed orally, such as a soft drink or cooking sauce.

"Material Change" means any change that would require a substantive revision to a Retail Marijuana Establishment's standard operating procedures for the cultivation of Retail Marijuana or the production of a Retail Marijuana Concentrate or Retail Marijuana Product.

"MITS" means Marijuana Inventory Tracking Solution.

"MITS Trained Administrator" means an Owner or an occupationally licensed employee of a Retail Marijuana Establishment who has attended and successfully completed MITS training and who has completed any additional training required by the Division.

"MITS User" means an Owner or occupationally licensed Retail Marijuana Establishment employee who is granted MITS User account access for the purposes of conducting inventory tracking functions in the MITS system and who has been successfully trained by a MITS Trained Administrator in the proper and lawful use of MITS.

"Medical Code" means the Colorado Medical Marijuana Code found at sections 12-43.3-101 *et seq.*, C.R.S.

"Medical Marijuana" means marijuana that is grown and sold pursuant to the Medical Code and includes seeds and Immature Plants.

"Medical Marijuana Business" means a Medical Marijuana Center, a Medical Marijuana-Infused Product Manufacturer, or an Optional Premises Cultivation Operation.

"Medical Marijuana Center" means a Person licensed pursuant to the Medical Code to operate a business as described in section 12-43.3-402, C.R.S., and sells medical marijuana to registered patients or primary caregivers as defined in Article XVIII, Section 14 of the Colorado Constitution, but is not a primary caregiver.

"Medical Marijuana Concentrate" means a specific subset of Medical Marijuana that was produced by extracting cannabinoids from Medical Marijuana. Categories of Medical Marijuana Concentrate include Water-Based Medical Marijuana Concentrate, Food-Based Medical Marijuana Concentrate and Solvent-Based Medical Marijuana Concentrate.

"Medical Marijuana-Infused Product" means a product infused with Medical Marijuana that is intended for use or consumption other than by smoking, including but not limited to edible product, ointments, and tinctures. Such products shall not be considered a food or drug for purposes of the "Colorado Food and Drug Act," part 4 of Article 5 of Title 25, C.R.S.

"Medical Marijuana-Infused Products Manufacturer" means a Person licensed pursuant to the Medical Code to operate a business as described in section 12-43.3-404, C.R.S.

"Monitoring" means the continuous and uninterrupted attention to potential alarm signals that could be transmitted from a Security Alarm System located at a Retail Marijuana Establishment Licensed Premises, for the purpose of summoning a law enforcement officer to the premises during alarm conditions.

"Monitoring Company" means a person in the business of providing security system Monitoring services for the Licensed Premises of a Retail Marijuana Establishment.

"Multiple-Serving Edible Retail Marijuana Product" means an Edible Retail Marijuana Product unit for sale to consumers containing more than 10mg of active THC and no more than 100mg of active THC. If the overall Edible Retail Marijuana Product unit for sale to the consumer consists of multiple pieces where each individual piece may contain less than 10mg active THC, yet in total all pieces combined within the unit for sale contain more than 10mg of active THC, then the Edible Retail Marijuana Product shall be considered a Multiple-Serving Edible Retail Marijuana Product.

"Notice of Denial" means a written statement from the State Licensing Authority, articulating the reasons or basis for denial of a license application.

"Occupational License" means a license granted to an individual by the State Licensing Authority pursuant to section 12-43.3-401 or 12-43.4-401, C.R.S.

"Opaque" means that the packaging does not allow the product to be seen without opening the packaging material.

"Optional Premises Cultivation Operation" means a Person licensed pursuant to the Medical Code to operate a business as described in section 12-43.3-403, C.R.S.

"Order to Show Cause" means a document from the State Licensing Authority alleging the grounds for imposing discipline against a Licensee's license.

"Owner" means the Person or Persons whose beneficial interest in the license is such that they bear risk of loss other than as an insurer, have an opportunity to gain profit from the operation or sale of the establishment, and have a controlling interest in a Retail Marijuana Establishment license, and includes any other Person that qualifies as an Owner pursuant to Rule R 204.

"Person" means a natural person, partnership, association, company, corporation, limited liability company, or organization, or a manager, agent, owner, director, servant, officer, or employee thereof; except that "Person" does not include any governmental organization.

"Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest or any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant; except that the term "pesticide" shall not include any article that is a "new animal drug" as designated by the United States Food and Drug Administration.

"Production Batch" means (a) any amount of Retail Marijuana Concentrate of the same category and produced using the same extraction methods, standard operating procedures and an identical group of Harvest Batch(es) of Retail Marijuana; or (b) any amount of Retail Marijuana Product of the same exact type, produced using the same ingredients, standard operating procedures and the same Production Batch(es) of Retail Marijuana Concentrate.

"Professional Engineer" means an individual who is licensed by the State of Colorado as a professional engineer pursuant to 12-25-101 et. seq., C.R.S.

"Proficiency Testing Samples" means performing the same analyses on the same samples and comparing results to ensure the Samples are homogenous and stable, and also that the set of samples analyzed are appropriate to test and display similarities and differences in results.

"Propagation" means the reproduction of Retail Marijuana plants by seeds, cuttings or grafting.

"RFID" means Radio Frequency Identification.



"Resealable" means that the package maintains its Child-Resistant effectiveness for multiple openings.

"Respondent" means a Person who has filed a petition for declaratory order that the State Licensing Authority has determined needs a hearing or legal argument or a Licensee who is subject to an Order to Show Cause.

"Restricted Access Area" means a designated and secure area within a Licensed Premises in a Retail Marijuana Store where Retail Marijuana and Retail Marijuana Product are sold, possessed for sale, and displayed for sale, and where no one under the age of 21 is permitted.

"Retail Code" means the Colorado Retail Marijuana Code found at sections 12-43.4-101 *et seq.*, C.R.S.

"Retail Marijuana" means all parts of the plant of the genus *cannabis* whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana concentrate, that is cultivated, manufactured, distributed, or sold by a licensed Retail Marijuana Establishment. "Retail Marijuana" does not include industrial hemp, nor does it include fiber produced from stalks, oil, or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.

"Retail Marijuana Concentrate" means a specific subset of Retail Marijuana that was produced by extracting cannabinoids from Retail Marijuana. Categories of Retail Marijuana Concentrate include Water-Based Retail Marijuana Concentrate, Food-Based Retail Marijuana Concentrate and Solvent-Based Retail Marijuana Concentrate.

"Retail Marijuana Cultivation Facility" means an entity licensed to cultivate, prepare, and package Retail Marijuana and sell Retail Marijuana to Retail Marijuana Establishments, but not to consumers.

"Retail Marijuana Establishment" means a Retail Marijuana Store, a Retail Marijuana Cultivation Facility, a Retail Marijuana Products Manufacturing Facility, or a Retail Marijuana Testing Facility.

"Retail Marijuana Product" means a product that is comprised of Retail Marijuana and other ingredients and is intended for use or consumption, such as, but not limited to, edible product, ointments and tinctures.

"Retail Marijuana Products Manufacturing Facility" means an entity licensed to purchase Retail Marijuana; manufacture, prepare, and package Retail Marijuana Product; and sell Retail Marijuana and Retail Marijuana Product only to other Retail Marijuana Products Manufacturing Facilities and Retail Marijuana Stores.

"Retail Marijuana Store" means an entity licensed to purchase Retail Marijuana from a Retail Marijuana Cultivation Facility and to purchase Retail Marijuana Product from a Retail Marijuana Products Manufacturing Facility and to sell Retail Marijuana and Retail Marijuana Product to consumers.

"Retail Marijuana Testing Facility" means a public or private laboratory licensed and certified, or approved by the Division, to conduct research and analyze Retail Marijuana, Retail Marijuana Products and Retail Marijuana Concentrate for contaminants and potency.

"Sample" means anything collected by Division personnel or a Division Approved Sampler from a Retail Marijuana Establishment or Medical Marijuana Business that is provided to a Retail

Marijuana Testing Facility for testing. The following is a non-exhaustive list of types of Samples: Retail Marijuana, Retail Marijuana Product, Retail Marijuana Concentrate, Medical Marijuana, Medical Marijuana-Infused Product, Medical Marijuana Concentrate, soil, growing medium, water, solvent or swab of a counter or equipment.

"Security Alarm System" means a device or series of devices, intended to summon law enforcement personnel during, or as a result of, an alarm condition. Devices may include hard-wired systems and systems interconnected with a radio frequency method such as cellular or private radio signals that emit or transmit a remote or local audible, visual, or electronic signal; motion detectors, pressure switches, duress alarms (a silent system signal generated by the entry of a designated code into the arming station to indicate that the user is disarming under duress); panic alarms (an audible system signal to indicate an emergency situation); and hold-up alarms (a silent system signal to indicate that a robbery is in progress).

"Shipping Container" means any container or wrapping used solely for the transport of Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product in bulk to other Retail Marijuana Establishments.

"Single-Serving Edible Retail Marijuana Product" means an Edible Retail Marijuana Product unit for sale to consumers containing no more than 10mg of active THC.

"Solvent-Based Retail Marijuana Concentrate" means a Retail Marijuana Concentrate that was produced by extracting cannabinoids from Retail Marijuana through the use of a solvent approved by the Division pursuant to Rule R 605.

"Standardized Graphic Symbol" means a graphic image or small design adopted by a Licensee to identify its business.

"Standardized Serving Of Marijuana" means a standardized single serving of active THC. The size of a Standardized Serving Of Marijuana shall be no more than 10mg of active THC.

"State Licensing Authority" means the authority created for the purpose of regulating and controlling the licensing of the cultivation, manufacture, distribution, and sale of Medical Marijuana and Retail Marijuana in Colorado, pursuant to section 12-43.3-201, C.R.S.

"THC" means tetrahydrocannabinol.

"THCA" means tetrahydrocannabinolic acid.

"Test Batch" means a group of Samples that are collectively submitted to a Retail Marijuana Testing Facility for testing purposes. A Test Batch may not be a combination of any two or three of the following: Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product.

"Universal Symbol" means the image established by the Division and made available to Licensees through the Division's website indicating Retail Marijuana or a Retail Marijuana Product is within a Container.

"Unrecognizable" means marijuana or *Cannabis* plant material rendered indistinguishable from any other plant material.

"Vegetative" means the state of the *Cannabis* plant during which plants do not produce resin or flowers and are bulking up to a desired production size for Flowering.

"Water-Based Retail Marijuana Concentrate" means a Retail Marijuana Concentrate that was produced by extracting cannabinoids from Retail Marijuana through the use of only water, ice or dry ice.

## **Basis and Purpose – R 604**

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(VIII), 12-43.4-202(3)(a)(XI), 12-43.4-202(3)(a)(XII), 12-43.4-202(3)(b)(IX), 12-43.4-202(3)(c)(V), and 12-43.4-404(3), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VII). The purpose of this rule is to establish minimum health and safety regulation for Retail Marijuana Products Manufacturing Facilities. It requires all Owners and Occupational Licensees to demonstrate an understanding of basic food handling safety practices or attend a food handler training course prior to manufacturing any Edible Retail Marijuana Product. It sets forth general standards and basic sanitary requirements for Retail Marijuana Products Manufacturing Facilities. It covers the physical premises where the products are made as well as the individuals handling the products. The State Licensing Authority intends for this rule to reduce any product contamination, which will benefit both the Licensees and consumers. The State Licensing Authority modeled this rule after those adopted by the Colorado Department of Public Health and Environment. This rule also authorizes the State Licensing Authority to require an independent consultant to conduct a health and sanitary audit of a Retail Marijuana Products Manufacturing Facility. This rule explains when a health and sanitary audit may be deemed necessary and sets forth possible consequences of a Retail Marijuana Establishment's refusal to cooperate or pay for the audit. This rule also establishes requirements for each Edible Retail Marijuana Product manufactured by a Retail Marijuana Products Manufacturing Facility. Overall, the State Licensing Authority intends this rule to help maintain the integrity of Colorado's Retail Marijuana businesses and the safety of the public.

## **R 604 –Retail Marijuana Products Manufacturing Facility: Health and Safety Regulations**

### **A. Training**

1. Prior to engaging in the manufacture of any Edible Retail Marijuana Product each Owner or Occupational Licensee must:
  - a. Have a currently valid ServSafe Food Handler Certificate obtained through the successful completion of an online assessment or print exam; or
  - b. Take a food safety course that includes basic food handling training and is comparable to, or is a course given by, the Colorado State University extension service or a state, county, or district public health agency, and must maintain a status of good standing in accordance with the course requirements, including attending any additional classes if necessary. Any course taken pursuant to this rule must last at least two hours and cover the following subjects:
    - i. Causes of foodborne illness, highly susceptible populations and worker illness;
    - ii. Personal hygiene and food handling practices;
    - iii. Approved sources of food;
    - iv. Potentially hazardous foods and food temperatures;
    - v. Sanitization and chemical use; and

vi. Emergency procedures (fire, flood, sewer backup).

2. A Retail Marijuana Products Manufacturing Facility must obtain documentation evidencing that each Owner and each Occupational Licensee has successfully completed the examination or course required by this rule and is in good standing. A copy of the documentation must be kept on file at any Licensed Premises where that Owner or Occupational Licensee is engaged in the manufacturing of an Edible Retail Marijuana Product.

**B. General Standards**

1. A Retail Marijuana Products Manufacturing Facility may be subject to inspection by the local fire department, building inspector, or code enforcement officer to confirm that no health or safety concerns are present. The inspection could result in additional specific standards to meet local jurisdiction restrictions related to Retail Marijuana. An annual fire safety inspection may result in the required installation of fire suppression devices, or other means necessary for adequate fire safety.
2. A Retail Marijuana Products Manufacturing Facility that manufactures edible Retail Marijuana Product shall comply with all kitchen-related health and safety standards of the relevant local jurisdiction and, to the extent applicable, with all Colorado Department of Public Health and Environment health and safety regulations applicable to retail food establishments, as set forth in 6 CCR 1010-2.

**C. Product Safety**

1. A Retail Marijuana Products Manufacturing Facility that manufactures Edible Retail Marijuana Product shall comply fully with paragraph C of this rule no later than November 1, 2014.
2. A Retail Marijuana Products Manufacturing Facility that manufactures Edible Retail Marijuana Product shall create and maintain standard production procedures and detailed manufacturing processes for each Edible Retail Marijuana Product it manufactures. These procedures and processes must be documented and made available on the licensed premises for inspection by the Marijuana Enforcement Division, the Colorado Department of Public Health & Environment, and local licensing authorities.
3. The size of a Standardized Serving Of Marijuana shall be no more than 10mg of active THC. A Retail Marijuana Products Manufacturing Facility that manufactures Edible Retail Marijuana Product shall determine the total number of Standardized Servings Of Marijuana for each product that it manufactures. No individual Edible Retail Marijuana Product unit for sale shall contain more than 100 milligrams of active THC.
4. The following information must be documented in the standard production procedures for each Edible Retail Marijuana Product: the amount in milligrams of Standardized Serving Of Marijuana, the total number of Standardized Servings Of Marijuana, and the total amount of active THC contained within the product.
5. Multiple-Serving Edible Retail Marijuana Product. A Retail Marijuana Products Manufacturing Facility must ensure that each single Standardized Serving Of Marijuana of a Multiple-Serving Edible Retail Marijuana Product is physically demarked in a way that enables a reasonable person to intuitively determine how

much of the product constitutes a single serving of active THC. Each demarked Standardized Serving Of Marijuana must be easily separable in order to allow an average person 21 years of age and over to physically separate, with minimal effort, individual servings of the product.

6. If an Edible Retail Marijuana Product is of the type that is impracticable to clearly demark each Standardized Serving Of Marijuana or to make each Standardized Serving Of Marijuana easily separable, then the product must contain no more than 10 mg of active THC per unit of sale, and the Retail Marijuana Products Manufacturing Facility must ensure that the product complies with subparagraph (B)(2)(a) of rule R 1004.5.

D. General Sanitary Requirements. The Licensee shall take all reasonable measures and precautions to ensure the following:

1. That any person who, by medical examination or supervisory observation, is shown to have, or appears to have, an illness, open lesion, including boils, sores, or infected wounds, or any other abnormal source of microbial contamination for whom there is a reasonable possibility of contact with preparation surfaces for Retail Marijuana or Retail Marijuana Product shall be excluded from any operations which may be expected to result in such contamination until the condition is corrected;
2. That hand-washing facilities shall be adequate and convenient and be furnished with running water at a suitable temperature. Hand-washing facilities shall be located in the Licensed Premises and/or in Retail Marijuana Product preparation areas and where good sanitary practices require employees to wash and/or sanitize their hands, and provide effective hand-cleaning and sanitizing preparations and sanitary towel service or suitable drying devices;
3. That all persons working in direct contact with preparation of Retail Marijuana or Retail Marijuana Product shall conform to hygienic practices while on duty, including but not limited to:
  - a. Maintaining adequate personal cleanliness;
  - b. Washing hands thoroughly in an adequate hand-washing area(s) before starting work, prior to engaging in the production of a Retail Marijuana Concentrate or manufacture of a Retail Marijuana Product and at any other time when the hands may have become soiled or contaminated; and
  - c. Refraining from having direct contact with preparation of Retail Marijuana or Retail Marijuana Product if the person has or may have an illness, open lesion, including boils, sores, or infected wounds, or any other abnormal source of microbial contamination, until such condition is corrected.
4. That there is sufficient space for placement of equipment and storage of materials as is necessary for the maintenance of sanitary operations for production of Retail Marijuana or Retail Marijuana Product;
5. That litter and waste are properly removed and the operating systems for waste disposal are maintained in an adequate manner so that they do not constitute a source of contamination in areas where Retail Marijuana or Retail Marijuana Product are exposed;

6. That floors, walls, and ceilings are constructed in such a manner that they may be adequately cleaned and kept clean and kept in good repair;
7. That there is adequate safety-type lighting in all areas where Retail Marijuana or Retail Marijuana Product are processed or stored and where equipment or utensils are cleaned;
8. That the Licensed Premises provides adequate screening or other protection against the entry of pests. Rubbish shall be disposed of so as to minimize the development of odor and minimize the potential for the waste becoming an attractant, harborage, or breeding place for pests;
9. That any buildings, fixtures, and other facilities are maintained in a sanitary condition;
10. That all contact surfaces, including utensils and equipment used for the preparation of Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product, shall be cleaned and sanitized as frequently as necessary to protect against contamination. Equipment and utensils shall be so designed and of such material and workmanship as to be adequately cleanable, and shall be properly maintained. Only sanitizers and disinfectants registered with the Environmental Protection Agency shall be used in a Retail Marijuana Products Manufacturing Facility and used in accordance with labeled instructions;
11. That toxic cleaning compounds, sanitizing agents, solvents used in the production of Retail Marijuana concentrate and other chemicals shall be identified, held, stored and disposed of in a manner that protects against contamination of Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product, and in a manner that is in accordance with any applicable local, state, or federal law, rule, regulation or ordinance;
12. That the water supply shall be sufficient for the operations intended and shall be derived from a source that is a regulated water system. Private water supplies shall be derived from a water source that is capable of providing a safe, potable, and adequate supply of water to meet the Licensed Premises needs;
13. That plumbing shall be of adequate size and design and adequately installed and maintained to carry sufficient quantities of water to required locations throughout the plant and that shall properly convey sewage and liquid disposable waste from the Licensed Premises. There shall be no cross-connections between the potable and waste water lines;
14. That each Retail Marijuana Products Manufacturing Facility shall provide its employees with adequate and readily accessible toilet facilities that are maintained in a sanitary condition and good repair;
15. That all operations in the receiving, inspecting, transporting, segregating, preparing, manufacturing, packaging, and storing of Retail Marijuana or Retail Marijuana Product shall be conducted in accordance with adequate sanitation principles;
16. That Retail Marijuana or Retail Marijuana Product that can support the rapid growth of undesirable microorganisms shall be held in a manner that prevents the growth of these microorganisms; and

17. That storage and transport of finished Retail Marijuana Product shall be under conditions that will protect products against physical, chemical, and microbial contamination as well as against deterioration of any container.

E. Standard Operating Procedures

1. A Retail Marijuana Products Manufacturing Facility must have written standard operating procedures for each category of Retail Marijuana Concentrate and type of Retail Marijuana Product that it produces.
  - a. All standard operating procedures for the production of a Retail Marijuana Concentrate must follow the requirements in Rule R 605.
  - b. A copy of all standard operating procedures must be maintained on the Licensed Premises of the Retail Marijuana Products Manufacturing Facility.
2. If a Retail Marijuana Products Manufacturing Facility makes a Material Change to its standard Retail Marijuana Concentrate or Retail Marijuana Product production process, it must document the change and revise its standard operating procedures accordingly. Records detailing the Material Change must be maintained on the relevant Licensed Premises.

- F. Additives. A Retail Marijuana Products Manufacturing Facility shall not include any Additive that is toxic within a Retail Marijuana Product; nor include any Additive for the purposes of making the product more addictive, appealing to children or misleading consumers.

G. Independent Health and Sanitary Audit

1. State Licensing Authority May Require An Independent Health and Sanitary Audit
  - a. When the State Licensing Authority determines a health and sanitary audit by an independent consultant is necessary, it may require a Retail Marijuana Products Manufacturing Facility to undergo such an audit. The scope of the audit may include, but need not be limited to, whether the Retail Marijuana Products Manufacturing Facility is in compliance with the requirements set forth in this rule or other applicable food handling laws, rules or regulations or compliance with the concentrate production rules in Rule R 605 or other applicable laws, rules and regulations.
  - b. In such instances, the Division may attempt to mutually agree upon the selection of the independent consultant with a Retail Marijuana Products Manufacturing Facility. However, the Division always retains the authority to select the independent consultant regardless of whether mutual agreement can be reached.
  - c. The Retail Marijuana Products Manufacturing Facility will be responsible for all costs associated with the independent health and sanitary audit.
2. When Independent Health and Sanitary Audit Is Necessary. The State Licensing Authority has discretion to determine when an audit by an independent consultant is necessary. The following is a non-exhaustive list of examples that may justify an independent audit:

- a. A Retail Marijuana Products Manufacturing Facility does not provide requested records related to the food handling training required for Owners or Occupational Licensees engaged in the production of Edible Retail Marijuana Product to the Division;
  - b. A Retail Marijuana Products Manufacturing Facility does not provide requested records related to the production of Retail Marijuana Concentrate, including but not limited to, certification of its Licensed Premises, equipment or standard operating procedures, training of Owners or Occupational Licensees, or Production Batch specific records;
  - c. The Division has reasonable grounds to believe that the Retail Marijuana Products Manufacturing Facility is in violation of one or more of the requirements set forth in this rule or Rule R 605;
  - d. The Division has reasonable grounds to believe that the Retail Marijuana Products Manufacturing Facility was the cause or source of contamination of Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product; or
  - e. Multiple Production Batches of Retail Marijuana Concentrate or Retail Marijuana Product produced by the Retail Marijuana Products Manufacturing Facility failed contaminant testing.
3. Compliance Required. A Retail Marijuana Products Manufacturing Facility must pay for and timely cooperate with the State Licensing Authority's requirement that it undergo an independent health and sanitary audit in accordance with this rule.
4. Suspension of Operations
- a. If the State Licensing Authority has objective and reasonable grounds to believe and finds upon reasonable ascertainment of the underlying facts that the public health, safety or welfare imperatively requires emergency action and incorporates such findings into its order, it may order summary suspension of the Retail Marijuana Products Manufacturing Facility's license. See Rule R 1302 – Disciplinary Process: Summary Suspensions.
  - b. Prior to or following the issuance of such an order, the Retail Marijuana Products Manufacturing Facility may attempt to come to a mutual agreement with the Division to suspend its operations until the completion of the independent audit and the implementation of any required remedial measures.
    - i. If an agreement cannot be reached or the State Licensing Authority, in its sole discretion, determines that such an agreement is not in the best interests of the public health, safety or welfare, then the State Licensing Authority will promptly institute license suspension or revocation procedures. See Rule R 1302 – Disciplinary Process: Summary Suspensions.
    - ii. If an agreement to suspend operations is reached, then the Retail Marijuana Products Manufacturing Facility may continue to care for its inventory and conduct any necessary internal business operations but it may not sell, transfer or wholesale Retail



Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product to another Retail Marijuana Establishment during the period of time specified in the agreement. Depending on the condition of the Retail Marijuana Products Manufacturing Facility and required remedial measures, the Division may permit a Retail Marijuana Products Manufacturing Facility to produce Retail Marijuana Concentrate or manufacture Retail Marijuana Product while operations have been suspended.

- H. Violation Affecting Public Safety. Failure to comply with this rule may constitute a license violation affecting public safety.

## **Basis and Purpose – R 712**

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(IV), 12-43.4-202(3)(a)(VII), 12-43.4-202(3)(a)(X), 12-43.4-202(3)(a)(XI), 12-43.4-202(3)(b)(III), 12-43.4-202(3)(b)(IX), 12-43.4-202(3)(c)(V), 12-43.4-202(3)(c)(VI), 12-43.4-202(3)(c)(VII), and 12-43.4-405, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VII). The purpose of this rule is to establish the portion of the Division's Mandatory Testing and Random Sampling program that is applicable to Retail Marijuana Testing Facilities.

## **R 712 – Retail Marijuana Testing Facility: Mandatory Sampling and Testing Program**

- A. Division Authority. The Division may elect to require that a Test Batch be submitted to a specific Retail Marijuana Testing Facility for testing to verify compliance, perform investigations, compile data or address a public health and safety concern.
- B. Test Batches
1. Retail Marijuana and Retail Marijuana Concentrate. A Retail Marijuana Testing Facility must establish a standard minimum weight of Retail Marijuana and Retail Marijuana Concentrate that must be included in a Test Batch for every type of test that it conducts.
  2. Retail Marijuana Product. A Retail Marijuana Testing Facility must establish a standard number of finished product(s) it requires to be included in each Test Batch of Retail Marijuana Product for every type of test that it conducts.
- C. Rejection of Test Batches and Samples
1. A Retail Marijuana Testing Facility may not accept a Test Batch that is smaller than its standard minimum amount.
  2. Beginning on July 1, 2014, a Retail Marijuana Testing Facility may not accept a Test Batch or Sample that it knows was not taken in accordance these rules or any additional Division sampling procedures or was not collected by Division personnel or a Division Approved Sampler.
- D. Notification of Retail Marijuana Establishment. If Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product failed a contaminant test, then the Retail Marijuana Testing Facility must immediately notify the Retail Marijuana Establishment that submitted the sample for testing and report the failure in accordance with all MITS procedures.

- E. Permissible Levels of Contaminants. If Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product is found to have a contaminant in levels exceeding those established as permissible under this rule, then it shall be considered to have failed contaminant testing. Notwithstanding the permissible levels established in this rule, the Division reserves the right to determine, upon good cause and reasonable grounds, that a particular Test Batch presents a risk to the public health or safety and therefore shall be considered to have failed a contaminant test.

1. Microbials (Bacteria, Fungus)

<b>Substance</b>	<b>Acceptable Limits Per Gram</b>	<b>Product to be Tested</b>
–Shiga-toxin producing Escherichia coli (STEC)*- Bacteria	< 1 Colony Forming Unit (CFU)	Flower; Retail Marijuana Products; Water- and Food-Based Concentrates
Salmonella species* – Bacteria	< 1 Colony Forming Unit (CFU)	
Aspergillus fumigatus, Aspergillus flavus, Aspergillus niger - Fungus	< 1 Colony Forming Unit (CFU)	

\*Testing facilities should contact the Colorado Department of Public Health and Environment when STEC and Salmonella are detected beyond the acceptable limits.

2. Residual Solvents

<b>Substance</b>	<b>Acceptable Limits Per Gram</b>	<b>Product to be Tested</b>
Butanes	< 800 Parts Per Million (PPM)	Solvent-Based Concentrates
Heptanes	< 500 Parts Per Million (PPM)	
Benzene**	< 1 Parts Per Million (PPM)	
Toluene**	< 1 Parts Per Million (PPM)	
Hexane**	< 10 Parts Per Million (PPM)	
Total Xylenes (m,p, o-xylenes)**	< 1 Parts Per Million (PPM)	
Any solvent not permitted for use pursuant to Rule R 605.	None Detected	

\*\* Note: These solvents are not approved for use. Due to their possible presence in the solvents approved for use per Rule R 605, limits have been listed here accordingly.

3. Metals

<b>Substance</b>	<b>Acceptable Limits Per Gram</b>	<b>Product to be Tested</b>
Metals (Arsenic, Cadmium, Lead and Mercury)	Lead – Max Limit: < 10 ppm Arsenic – Max Limit: < 10 ppm Cadmium – Max Limit: <4.1 ppm Mercury – Max Limit: <2.0 ppm	Flower; Water-, Food-, and Solvent-Based Concentrates; and Retail Marijuana Products

4. Other Contaminants

Pesticide	If testing identifies the use of a banned Pesticide or the improper application of a permitted Pesticide, then that Test Batch shall be considered to have failed contaminant testing.
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Chemicals	If Test Batch is found to contain levels of any chemical that could be toxic if consumed, then the Division may determine that the Test Batch has failed contaminant testing.
Microbials	If Test Batch is found to contain levels of any microbial that could be toxic if consumed, then the Division may determine that the Test Batch has failed contaminant testing.

4. Division Notification. A Retail Marijuana Testing Facility must notify the Division if a Test Batch is found to contain levels of a contaminant not listed within this rule that could be injurious to human health if consumed.

#### F. Potency Testing

1. Cannabinoids Potency Profiles. A Retail Marijuana Testing Facility may test and report results for any cannabinoid provided the test is conducted in accordance with the Division's Retail Marijuana Testing Facility Certification Policy Statement.
2. Reporting of Results
  - a. For potency tests on Retail Marijuana and Retail Marijuana Concentrate, results must be reported by listing a single percentage concentration for each cannabinoid that represents an average of all samples within the Test Batch.
  - b. For potency tests conducted on Retail Marijuana Product, whether conducted on each individual production batch or via Process Validation per rule R 1503, results must be reported by listing the total number of milligrams contained within a single Retail Marijuana Product unit for sale for each cannabinoid and affirming the THC content is homogenous.
3. Dried Flower. All potency tests conducted on Retail Marijuana must occur on dried and cured Retail Marijuana that is ready for sale.
4. Failed Potency Tests for Retail Marijuana Products
  - a. If an individually packaged Edible Retail Marijuana Product contained within a Test Batch is determined to have more than 100 mgs of THC within it, then the Test Batch shall be considered to have failed potency testing.
  - b. If the THC content of a Marijuana Product is determined through testing to not be homogenous, then it shall be considered to have failed potency testing. A Retail Marijuana Product shall be considered to not be homogenous if 10% of the infused portion of the Retail Marijuana Product contains more than 20% of the total THC contained within entire Retail Marijuana Product.

#### **Basis and Purpose – R 1004**

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(IV), and 12-43.4-202(3)(a)(VII), 12-43.4-404(6), and 25-4-1614(3)(a), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VI). The purpose of this rule is to ensure that every

Retail Marijuana Products Manufacturing Facility labels each Shipping Container and Container holding a Retail Marijuana Product with all of the necessary and relevant information for the receiving Retail Marijuana Establishment. In addition, this rule clarifies basic packaging requirements. The State Licensing Authority wants to ensure the regulated community employs proper labeling techniques to each Retail Marijuana Product as this is a public health and safety concern.

**R 1004 – Packaging and Labeling Requirements of a Retail Marijuana Product by a Retail Marijuana Products Manufacturing Facility**

A. This rule is repealed effective November 1, 2014. Retail Marijuana Product Manufacturing Facilities shall refer to rule R 1004.5 for Retail Marijuana Product packaging and labeling requirements beginning November 1, 2014.

B. Packaging of Retail Marijuana Product by a Retail Marijuana Products Manufacturing Facility

1. Every Retail Marijuana Products Manufacturing Facility must ensure that each Retail Marijuana Product is individually packaged within a Container prior to transport or transfer to another Retail Marijuana Establishment.
2. Every Retail Marijuana Products Manufacturing Facility must ensure that each Container holding a Retail Marijuana Product is placed in a Shipping Container prior to transport or transfer to another Retail Marijuana Establishment.

C. Labeling of Retail Marijuana Product Containers by a Retail Marijuana Products

Manufacturing Facility . A Retail Marijuana Products Manufacturing Facility must ensure that a label(s) is affixed to every Container holding a Retail Marijuana Product that includes all of the information required by this rule prior to transport or transfer to another Retail Marijuana Establishment.

1. Required Information (General) . Every Retail Marijuana Products Manufacturing Facility must ensure the following information is affixed to every Container holding a Retail Marijuana Product:
  - a. The license number of the Retail Marijuana Cultivation Facility(-ies) where the Retail Marijuana used to produce the Retail Marijuana Product was grown;
  - b. The Production Batch Number(s) of Retail Marijuana concentrate(s) used in the production of the Retail Marijuana Product.
  - c. The license number of the Retail Marijuana Products Manufacturing Facility that produced the Retail Marijuana Product.
  - d. The Production Batch Number(s) assigned to the Retail Marijuana Product.
  - e. A statement about whether the Container is Child-Resistant.
  - f. A clear set of usage instructions for non-Edible Retail Marijuana Product.
  - g. A complete list of all nonorganic pesticides, fungicides, and herbicides used during the cultivation of the Retail Marijuana used to produce the Retail Marijuana Product.

- h. A complete list of solvents and chemicals used in the creation of any Retail Marijuana concentrate that was used to produce the Retail Marijuana Product.
- 2. Required Information (Edible Retail Marijuana Product) . Every Retail Marijuana Products Manufacturing Facility must ensure that the following information or statement is affixed to every Container holding an Edible Retail Marijuana Product:
  - a. Ingredient List . A list of all ingredients used to manufacture the Edible Retail Marijuana Product; which may include a list of any potential allergens contained within.
  - b. Statement Regarding Refrigeration . If the Retail Marijuana Product is perishable, a statement that the Retail Marijuana Product must be refrigerated.
  - c. Serving Size Statement . **"The standardized serving size for this product includes no more than ten milligrams of active THC."**
  - d. Statement of Expiration Date . A product expiration date, for perishable Retail Marijuana Product, upon which the product will no longer be fit for consumption, or a use-by-date, upon which the product will no longer be optimally fresh. Once a label with a use-by or expiration date has been affixed to a Container holding a Retail Marijuana Product, a Licensee shall not alter that date or affix a new label with a later use-by or expiration date.
- 3. Permissive Information (Edible Retail Marijuana Product) . Every Retail Marijuana Products Manufacturing Facility may affix a label(s) with the following information to every Container holding an Edible Retail Marijuana Product:
  - a. The Retail Marijuana Product's compatibility with dietary restrictions; and
  - b. A nutritional fact panel that, if included, must be based on the number of THC servings within the Container.
- 4. Required Statement When Contaminant Tests are Performed . Every Retail Marijuana Products Manufacturing Facility must ensure that a label is affixed to each Container holding a Retail Marijuana Product with a statement asserting that the Retail Marijuana Product was tested for contaminants and the results of those tests, if:
  - a. A Retail Marijuana Testing Facility(ies) tested every Harvest Batch used to produce the Retail Marijuana Product for (1) molds, mildew and filth; (2) microbials; (3) herbicides, pesticides and fungicides, (4) and harmful chemicals;
  - b. A Retail Marijuana Testing Facility tested every Production Batch of Retail Marijuana concentrate used to produce the Retail Marijuana Product for residual solvents, poisons or toxins; and
  - c. A Retail Marijuana Testing Facility(ies) tested the Production Batch of the Retail Marijuana Product for microbials and molds, mildew and filth.

5. Required Statement if Cannabinoid Potency is Tested . If a Retail Marijuana Testing Facility tested the Production Batch of the Retail Marijuana Product within the Container for potency, then every Retail Marijuana Products Manufacturing Facility must ensure that a label is affixed to the Container with a potency profile expressed in milligrams and the number of THC servings within the Container.
  6. Required Statement When No Containment Testing is Completed . Every Retail Marijuana Products Manufacturing Facility must ensure that a label is affixed to each Container that holds a Retail Marijuana Product with the statement: **"The marijuana product contained within this package has not been tested for contaminants."** unless:
    - a. A Retail Marijuana Testing Facility(ies) tested every Harvest Batch used to produce the Retail Marijuana Product for (1) molds, mildew and filth; (2) microbials; (3) herbicides, pesticides and fungicides, (4) and harmful chemicals;
    - b. A Retail Marijuana Testing Facility tested every Production Batch of Retail Marijuana concentrate used to produce the Retail Marijuana Product for residual solvents, poisons or toxins; and
    - c. A Retail Marijuana Testing Facility(ies) tested the Production Batch of the Retail Marijuana Product for microbials and molds, mildew and filth.
  7. Required Statement When No Potency Testing Completed . If a Retail Marijuana Testing Facility did not test the Production Batch of the Retail Marijuana Product within a Container for potency, then every Retail Marijuana Products Manufacturing Facility must ensure that a label is affixed to the Container with the a statement: **"The marijuana product contained within this package has not been tested for potency, consume with caution."**
- D. Labeling of Retail Marijuana Product Shipping Containers by Retail Marijuana Products Manufacturing Facility . Prior to transporting or transferring any Retail Marijuana Product to another Retail Marijuana Establishment, a Retail Marijuana Manufacturing Products Facility must ensure that a label is affixed to a Shipping Container holding Retail Marijuana Product that includes all of the information required by this rule. A Retail Marijuana Products Manufacturing Facility must include the following information on every Shipping Container:
1. The number of Containers holding a Retail Marijuana Product within the Shipping Container; and
  2. The license number of the Retail Marijuana Products Manufacturing Facility(-ies) that produced the Retail Marijuana Product within the Shipping Container.

#### **Basis and Purpose – R 1004.5**

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(IV), and 12-43.4-202(3)(a)(VII), 12-43.4-404(6), and 25-4-1614(3)(a), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VI). The purpose of this rule is to ensure that every Retail Marijuana Products Manufacturing Facility labels each Shipping Container and Container holding a Retail Marijuana Product with all of the necessary and relevant information for the receiving Retail Marijuana Establishment. In addition, this rule clarifies basic packaging requirements. The State Licensing Authority wants to ensure the regulated community employs proper packaging and labeling techniques for each Retail Marijuana Product as this is a public health and safety concern.

**R 1004.5 – Packaging and Labeling Requirements of a Retail Marijuana Product by a Retail Marijuana Products Manufacturing Facility**

- A. Applicability. This rule shall apply to all Retail Marijuana Products manufactured on or after November 1, 2014.
- B. Packaging of Retail Marijuana Product by a Retail Marijuana Products Manufacturing Facility
1. General Standard.
    - a. Every Retail Marijuana Products\_Manufacturing Facility must ensure that each Container holding a Retail Marijuana Product is placed in a Shipping Container prior to transport or transfer to another Retail Marijuana Establishment.
  2. Single-Serving Edible Retail Marijuana Product.
    - a. Every Retail Marijuana Products Manufacturing Facility must ensure that each Single-Serving Edible Retail Marijuana Product is individually packaged within a Child-Resistant Container prior to transport or transfer to another Retail Marijuana Establishment.
    - b. A Retail Marijuana Products Manufacturing Facility may bundle Single-Serving Edible Retail Marijuana Products that are individually packaged in Child-Resistant packaging into a larger package so long as the total amount of active THC contained within the bundled package does not exceed 100 milligrams and the external packaging complies with the Serving Size and Total Active THC Statement requirement of subparagraph (C)(2)(c) of this rule.
  3. Multiple-Serving Edible Retail Marijuana Product.
    - a. Every Retail Marijuana Products Manufacturing Facility must ensure that each Multiple-Serving Edible Marijuana Product is individually packaged within a Child-Resistant Container that maintains its Child-Resistant effectiveness for multiple openings prior to transport or transfer to another Retail Marijuana Establishment.
  4. Liquid Edible Retail Marijuana Product.
    - a. Liquid Edible Retail Marijuana Product that contains no more than one Standardized Serving Of Marijuana. A Retail Marijuana Products Manufacturing Facility must ensure that each product complies with subparagraph (B)(2)(a) of this rule.
    - b. Liquid Edible Retail Marijuana Product that contains more than one Standardized Serving Of Marijuana. A Retail Marijuana Products Manufacturing Facility must ensure that each product is packaged in a Child-Resistant Container that maintains its Child-Resistant effectiveness for multiple openings. The Container shall clearly demark each Standardized Serving Of Marijuana in a way that enables a reasonable person to intuitively determine how much of the product constitutes a single serving of active THC. The portion of the Container that clearly demarks each Standardized Serving Of Marijuana need not be Opaque.

C. Labeling of Retail Marijuana Product Containers by a Retail Marijuana Products Manufacturing Facility. A Retail Marijuana Products Manufacturing Facility must ensure that a label(s) is affixed to every Container holding a Retail Marijuana Product that includes all of the information required by this rule prior to transport or transfer to another Retail Marijuana Establishment.

1. Required Information (General). Every Retail Marijuana Products Manufacturing Facility must ensure the following information is affixed to every Container holding a Retail Marijuana Product:

- a. The license number of the Retail Marijuana Cultivation Facility(-ies) where the Retail Marijuana used to produce the Retail Marijuana Product was grown;
- b. The Production Batch Number(s) of Retail Marijuana concentrate(s) used in the production of the Retail Marijuana Product.
- c. The license number of the Retail Marijuana Products Manufacturing Facility that produced the Retail Marijuana Product.
- d. The Production Batch Number(s) assigned to the Retail Marijuana Product.
- e. A statement about whether the Container is Child-Resistant.
- f. A clear set of usage instructions for non-Edible Retail Marijuana Product.
- g. The Identity Statement and Standardized Graphic Symbol of the Retail Marijuana Products Manufacturing Facility that manufactured the Retail Marijuana Product. A Licensee may elect to have its Identity Statement also serve as its Standardized Graphic Symbol for purposes of complying with this rule. The Licensee shall maintain a record of its Identity Statement and Standardized Graphic Symbol and make such information available to the State Licensing Authority upon request;
- h. The Universal Symbol, indicating that the Container holds marijuana, which must be no smaller than  $\frac{1}{4}$  of an inch by  $\frac{1}{4}$  of an inch;
- i. The following warning statements:
  - i. **“There may be health risks associated with the consumption of this product.”**
  - ii. **“This product is infused with marijuana.”**
  - iii. **“This product was produced without regulatory oversight for health, safety, or efficacy.”**
  - iv. **“The intoxicating effects of this product may be delayed by two or more hours.”**
  - v. **“There may be additional health risks associated with the consumption of this product for women who are pregnant, breastfeeding, or planning on becoming pregnant.”**



- j. A complete list of all nonorganic pesticides, fungicides, and herbicides used during the cultivation of the Retail Marijuana used to produce the Retail Marijuana Product.
  - k. A complete list of solvents and chemicals used in the creation of any Retail Marijuana concentrate that was used to produce the Retail Marijuana Product.
2. Required Information (Edible Retail Marijuana Product). Every Retail Marijuana Products Manufacturing Facility must ensure that the following information or statement is affixed to every Container holding an Edible Retail Marijuana Product:
- a. Ingredient List. A list of all ingredients used to manufacture the Edible Retail Marijuana Product; which may include a list of any potential allergens contained within.
  - b. Statement Regarding Refrigeration. If the Retail Marijuana Product is perishable, a statement that the Retail Marijuana Product must be refrigerated.
  - c. Serving Size and Total Active THC Statement. Information regarding: the size of Standardized Serving Of Marijuana for the product by milligrams, the total number of Standardized Servings of Marijuana in the product, and the total amount of active THC in the product by milligrams. For example: **“The serving size of active THC in this product is X mg, this product contains X servings of marijuana, and the total amount of active THC in this product is X mg.”**
  - d. Statement of Expiration Date. A product expiration date, for perishable Retail Marijuana Product, upon which the product will no longer be fit for consumption, or a use-by-date, upon which the product will no longer be optimally fresh. Once a label with a use-by or expiration date has been affixed to a Container holding a Retail Marijuana Product, a Licensee shall not alter that date or affix a new label with a later use-by or expiration date.
3. Permissive Information (Edible Retail Marijuana Product). Every Retail Marijuana Products Manufacturing Facility may affix a label(s) with the following information to every Container holding an Edible Retail Marijuana Product:
- a. The Retail Marijuana Product’s compatibility with dietary restrictions; and
  - b. A nutritional fact panel that, if included, must be based on the number of THC servings within the Container.
4. Required Statement When Contaminant Tests are Performed. Every Retail Marijuana Products Manufacturing Facility must ensure that a label is affixed to each Container holding a Retail Marijuana Product with a statement asserting that the Retail Marijuana Product was tested for contaminants and the results of those tests, if:
- a. A Retail Marijuana Testing Facility(ies) tested every Harvest Batch used to produce the Retail Marijuana Product for contaminants required to be tested per rule R 1501;

- b. A Retail Marijuana Testing Facility tested every Production Batch of Retail Marijuana concentrate used to produce the Retail Marijuana Product for contaminants required to be tested per rule R 1501; and
  - c. A Retail Marijuana Testing Facility(ies) tested the Production Batch of the Retail Marijuana Product for contaminants required to be tested per rule R 1501.
- 5. Required Statement When Cannabinoid Potency is Tested. Every Retail Marijuana Products Manufacturing Facility must ensure that a label is affixed to the Container with a potency profile expressed in milligrams pursuant to rule R 1503 and the number of THC servings within the Container.
- 6. Required Statement When No Contaminant Testing is Completed. Every Retail Marijuana Products Manufacturing Facility must ensure that a label is affixed to each Container that holds a Retail Marijuana Product with the statement: **“The marijuana product contained within this package has not been tested for contaminants.”** unless:
  - a. A Retail Marijuana Testing Facility(ies) tested every Harvest Batch used to produce the Retail Marijuana Product for contaminants required to be tested per rule R 1501;
  - b. A Retail Marijuana Testing Facility tested every Production Batch of Retail Marijuana concentrate used to produce the Retail Marijuana Product for contaminants required to be tested per rule R 1501; and
  - c. A Retail Marijuana Testing Facility(ies) tested the Production Batch of the Retail Marijuana Product for contaminants required to be tested per rule R 1501.
- D. Labeling of Retail Marijuana Product Shipping Containers by Retail Marijuana Products Manufacturing Facility. Prior to transporting or transferring any Retail Marijuana Product to another Retail Marijuana Establishment, a Retail Marijuana Manufacturing Products Facility must ensure that a label is affixed to a Shipping Container holding Retail Marijuana Product that includes all of the information required by this rule. A Retail Marijuana Products Manufacturing Facility must include the following information on every Shipping Container:
  - 1. The number of Containers holding a Retail Marijuana Product within the Shipping Container; and
  - 2. The license number of the Retail Marijuana Products Manufacturing Facility(-ies) that produced the Retail Marijuana Product within the Shipping Container.

## **Basis and Purpose – R 1006**

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(IV), 12-43.4-202(3)(a)(VII), 12-43.4-402(4), and 25-4-1614(3)(a), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VI). The purpose of this rule is to ensure that the labeling on each Container holding a Retail Marijuana Product includes necessary and relevant information for

consumers, does not include health and physical benefit claims, is easily accessible to consumers, and is clear and noticeable. In addition, this rule clarifies basic packaging requirements. Further, the State Licensing Authority believes based on written and oral comments it has received through the rulemaking process that prohibiting labels that are intended to target individuals under the age of 21 and requiring child-resistant packaging is of a state wide concern and would assist in limiting exposure and diversion to minors. The State Licensing Authority wants to ensure the regulated community employs proper labeling techniques to each Retail Marijuana Product as this is a public health and safety concern.

#### **R 1006 – Packaging and Labeling of Retail Marijuana Product by a Retail Marijuana Store**

- A. This rule is repealed effective November 1, 2014. Retail Marijuana Stores shall refer to rule R 1006.5 for Retail Marijuana Product packaging and labeling requirements beginning November 1, 2014.
- B. Packaging of Retail Marijuana Product by a Retail Marijuana Store . A Retail Marijuana Store must ensure that each Retail Marijuana Product is placed within a Container prior to sale to a consumer. If the Container is not Child-Resistant, the Retail Marijuana Store must place the Container within an Exit Package that is Child-Resistant.
- C. Labeling of Retail Marijuana Product by a Retail Marijuana Store . Every Retail Marijuana Store must ensure that a label(s) is affixed to every Container holding a Retail Marijuana Product that includes all of the information required by this rule prior to sale to a consumer:
  - 1. Required Information (General) . Every Retail Marijuana Store must ensure the following information is affixed to every Container holding a Retail Marijuana Product:
    - a. The license number of the Retail Marijuana Cultivation Facility(-ies) where the Retail Marijuana used to produce the Retail Marijuana Product was grown;
    - b. The Production Batch Number(s) assigned to the Retail Marijuana concentrate used to produce the Retail Marijuana Product;
    - c. The license number of the Retail Marijuana Products Manufacturing Facility that produced the Retail Marijuana Product;
    - d. The Production Batch Number(s) assigned to the Retail Marijuana Product;
    - e. The license number of the Retail Marijuana Store that sold the Retail Marijuana Product to the consumer;
    - f. A statement about whether the Container is Child-Resistant;
    - g. The Identity Statement and Standardized Graphic Symbol of the Retail Marijuana Store that sold the Retail Marijuana Product to the consumer. A Licensee may elect to have its Identity Statement also serve as its Standardized Graphic Symbol for purposes of complying with this rule. The Licensee shall maintain a record of its Identity Statement and Standardized Graphic Symbol and make such information available to the State Licensing Authority upon request;
    - h. The date of sale to the consumer;

- i. The following warning statements:
    - i. **"There may be health risks associated with the consumption of this product."**
    - ii. **"This product is intended for use by adults 21 years and older. Keep out of the reach of children."**
    - iii. **"This product is unlawful outside the State of Colorado."**
    - iv. **"This product is infused with marijuana."**
    - v. **"This product was produced without regulatory oversight for health, safety, or efficacy."**
    - vi. **"The intoxicating effects of this product may be delayed by two or more hours."**
    - vii. **"There may be additional health risks associated with the consumption of this product for women who are pregnant, breastfeeding, or planning on becoming pregnant."**
    - viii. **"Do not drive a motor vehicle or operate heavy machinery while using marijuana."**
  - j. The Universal Symbol, indicating that the Container holds marijuana, which must be no smaller than ¼ of an inch by ¼ of an inch;
  - k. A clear set of instructions for proper usage for non-Edible Retail Marijuana Product;
  - l. A complete list of all nonorganic pesticides, fungicides, and herbicides used during the cultivation of the Retail Marijuana used to produce the Retail Marijuana Product; and
  - m. A complete list of solvents and chemicals used in the creation of any Retail Marijuana concentrate used in the produce of the Retail Marijuana Product.
2. Required Information (Edible Retail Marijuana Product) . Every Retail Marijuana Store must ensure that the following information or statement is affixed to every Container holding an Edible Retail Marijuana Product:
- a. Ingredient List . A list of all ingredients used to manufacture the Edible Retail Marijuana Product; which may include a list of any potential allergens contained within.
  - b. Statement Regarding Refrigeration . If the Retail Marijuana Product is perishable, a statement that the Retail Marijuana Product must be refrigerated.
  - c. Serving Size Statement . **"The standardized serving size for this product includes no more than ten milligrams of active THC."**

- d. Statement of Expiration Date . A product expiration date, for perishable Retail Marijuana Product, upon which the product will no longer be fit for consumption, or a use-by-date, upon which the product will no longer be optimally fresh. Once a label with a use-by or expiration date has been affixed to a Container holding a Retail Marijuana Product, a Licensee shall not alter that date or affix a new label with a later use-by or expiration date.
- 3. Permissive Information (Edible Retail Marijuana Product) . Every Retail Marijuana Store may affix a label(s) with the following information to every Container holding an Edible Retail Marijuana Product:
  - a. The Retail Marijuana Product's compatibility with dietary restrictions; and
  - b. A nutritional fact panel that, if included, must be based on the number of THC servings within the Container.
- 4. Required Statement When Contaminant Tests are Performed . Every Retail Marijuana Store must ensure that a label is affixed to each Container holding a Retail Marijuana Product with a statement asserting that the Retail Marijuana Product was tested for contaminants and the results of those tests, if:
  - a. A Retail Marijuana Testing Facility(ies) tested every Harvest Batch used to produce the Retail Marijuana Product for (1) molds, mildew and filth; (2) microbials; (3) herbicides, pesticides and fungicides, (4) and harmful chemicals;
  - b. A Retail Marijuana Testing Facility tested every Production Batch of Retail Marijuana concentrate used to produce the Retail Marijuana Product for residual solvents, poisons or toxins; and
  - c. A Retail Marijuana Testing Facility(ies) tested the Production Batch of the Retail Marijuana Product for microbials and molds, mildew and filth.
- 5. Required Statement if Cannabinoid Potency is Tested . If a Retail Marijuana Testing Facility tested the Production Batch of the Retail Marijuana Product within the Container for potency, then every Retail Marijuana Store must ensure that a label is affixed to the Container with a potency profile expressed milligrams and the number of THC servings within the Container.
- 6. Required Statement When No Containment Testing is Completed . Every Retail Marijuana Store must ensure that a label is affixed to each Container that holds a Retail Marijuana Product with the statement: **"The marijuana product contained within this package has not been tested for contaminants."** unless:
  - a. A Retail Marijuana Testing Facility(ies) tested every Harvest Batch used to produce the Retail Marijuana Product for (1) molds, mildew and filth; (2) microbials; (3) herbicides, pesticides and fungicides, (4) and harmful chemicals;
  - b. A Retail Marijuana Testing Facility tested every Production Batch of Retail Marijuana concentrate used to produce the Retail Marijuana Product for residual solvents, poisons or toxins; and

- c. A Retail Marijuana Testing Facility(ies) tested the Production Batch of the Retail Marijuana Product for microbials and molds, mildew and filth.

- 7. Required Statement When No Potency Testing Completed . If a Retail Marijuana Testing Facility did not test the Production Batch of the Retail Marijuana Product within a Container for potency, then every Retail Marijuana Store must ensure that a label is affixed to the Container with the a statement: **"The marijuana product contained within this package has not been tested for potency, consume with caution."**

## **Basis and Purpose – R 1006.5**

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(IV), 12-43.4-202(3)(a)(VII), 12-43.4-402(4), and 25-4-1614(3)(a), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VI). The purpose of this rule is to ensure that the labeling on each Container holding a Retail Marijuana Product includes necessary and relevant information for consumers, does not include health and physical benefit claims, is easily accessible to consumers, and is clear and noticeable. In addition, this rule clarifies basic packaging requirements. Further, the State Licensing Authority believes based on written and oral comments it has received through the rulemaking process that prohibiting labels that are intended to target individuals under the age of 21 and requiring child-resistant packaging is of a state wide concern and would assist in limiting exposure and diversion to minors. The State Licensing Authority wants to ensure the regulated community employs proper packaging and labeling techniques for each Retail Marijuana Product as this is a public health and safety concern.

## **R 1006.5 – Packaging and Labeling of Retail Marijuana Product by a Retail Marijuana Store**

- A. Applicability. This rule shall apply to all Retail Marijuana Stores beginning November 1, 2014.
- B. Packaging Requirements for a Retail Marijuana Store.
  - 1. Beginning December 1, 2014, a Retail Marijuana Store shall not purchase or take possession of Edible Retail Marijuana Product that does not comply with rule R 1004.5. Beginning February 1, 2015, a Retail Marijuana Store shall not sell Edible Retail Marijuana Product that does not comply with rule R 1004.5.
  - 2. A Retail Marijuana Store must ensure that each Retail Marijuana Product that is not an Edible Retail Marijuana Product is placed within a Container prior to sale to a consumer. If the Container is not Child-Resistant, the Retail Marijuana Store must place the Container within an Exit Package that is Child-Resistant.
  - 3. A Retail Marijuana Store must inspect each Edible Retail Marijuana Product prior to concluding the sale of the product to the consumer in order to ensure that it meets all Child-Resistant packaging requirements of rule R 1004.5.
  - 4. A Retail Marijuana Store must ensure that each Edible Retail Marijuana Product placed within a Container for sale to a consumer pursuant to this rule must also be placed in an Opaque Exit Package at the point of sale to the consumer.
- C. Labeling of Retail Marijuana Product by a Retail Marijuana Store. Every Retail Marijuana Store must ensure that a label(s) is affixed to every Exit Package at the time of sale to a consumer that includes all of the information required by this rule:

1. Required Information (General). Every Retail Marijuana Store must ensure the following information is affixed to every Container holding a Retail Marijuana Product:
  - a. The license number of the Retail Marijuana Store that sold the Retail Marijuana Product to the consumer;
  - b. A statement about whether the Container is Child-Resistant;
  - c. The Identity Statement and Standardized Graphic Symbol of the Retail Marijuana Store that sold the Retail Marijuana Product to the consumer. A Licensee may elect to have its Identity Statement also serve as its Standardized Graphic Symbol for purposes of complying with this rule. The Licensee shall maintain a record of its Identity Statement and Standardized Graphic Symbol and make such information available to the State Licensing Authority upon request;
  - d. The date of sale to the consumer;
  - e. The following warning statements:
    - i. **“There may be health risks associated with the consumption of this product.”**
    - ii. **“This product is intended for use by adults 21 years and older. Keep out of the reach of children.”**
    - iii. **“This product is unlawful outside the State of Colorado.”**
    - iv. **“This product is infused with marijuana.”**
    - v. **“This product was produced without regulatory oversight for health, safety, or efficacy.”**
    - vi. **“The intoxicating effects of this product may be delayed by two or more hours.”**
    - vii. **“There may be additional health risks associated with the consumption of this product for women who are pregnant, breastfeeding, or planning on becoming pregnant.”**
    - viii. **“Do not drive a motor vehicle or operate heavy machinery while using marijuana.”**
  - f. The Universal Symbol, indicating that the Exit Package holds marijuana, which must be no smaller than ¼ of an inch by ¼ of an inch.

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(IV), 12-43.4-202(3)(a)(VII), 12-43.4-202(3)(a)(X), 12-43.4-202(3)(a)(XI), 12-43.4-202(3)(a)(XII), 12-43.4-202(3)(b)(III), 12-43.4-202(3)(b)(IX), 12-43.4-202(3)(c)(VII), 12-43.4-402(4), 12-43.4-403(5), and 12-43.4-404(6), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VII). The purpose of this rule is to protect the public health and safety by establishing the process validation portion of the Division's Retail Marijuana Sampling and Testing Program.

## **R 1501 – Retail Marijuana Testing Program – Contaminant Testing**

**This rule shall be effective on October 1, 2014.**

- A. Contaminant Testing Required. Until a Retail Marijuana Cultivation Facility's or a Retail Marijuana Product Manufacturing Facility's cultivation or production process has been validated under this rule, it shall not wholesale, transfer, or process into a Retail Marijuana Concentrate or Retail Marijuana Product any Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product unless Samples from the Harvest Batch or Production Batch from which that Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product was derived was tested by a Retail Marijuana Testing Facility for contaminants and passed all contaminant tests required by paragraph C of this rule.
- B. Validation of Process - Contaminant Testing
1. Retail Marijuana. A Retail Marijuana Cultivation Facility's cultivation process shall be deemed valid regarding Contaminants if every Harvest Batch that it produced during a 12 week period passed all contaminant tests required by paragraph C of this rule. This must include at least 12 Test Batches that were submitted at least six days apart and contain Samples from entirely different Harvest Batches.
  2. Retail Marijuana Concentrate or Retail Marijuana Product. A Retail Marijuana Cultivation Facility's or a Retail Marijuana Products Manufacturing Facility's production process shall be deemed valid regarding contaminants if every Production Batch that it produced during a four week period passed all contaminant tests required by paragraph C of this rule. This must include at least four Test Batches that were submitted at least six days apart which contain Samples from entirely different Production Batches.
- C. Required Contaminant Tests
1. Microbial Contaminant Testing. Each Harvest Batch of Retail Marijuana and Production Batch of Water- or Food-Based Retail Marijuana Concentrate and Retail Marijuana Product must be tested for microbial contamination by a Retail Marijuana Testing Facility. The microbial contamination test must include, but need not be limited to, testing to determine the presence of and amounts present of Salmonella sp., Escherichia coli., and Aspergillus.
  2. Residual Solvent Contaminant Testing. Each Production Batch of Solvent-Based Retail Marijuana Concentrate produced by a Retail Marijuana Products Manufacturing Facility must be tested for residual solvent contamination by a Retail Marijuana Testing Facility. The residual solvent contamination test must include, but need not be limited to, testing to determine the presence of, and amounts present of, butane, heptanes, benzene\*, toluene\*, hexane\*, and xylenes\*. \* Note: These solvents are not approved for use. Testing is required for these solvents due to their possible presence in the solvents approved for use per rule R 605.



D. Additional Required Tests. The Division may require additional tests to be conducted on a Harvest Batch or Production Batch prior to a Retail Marijuana Cultivation Facility or a Retail Marijuana Product Manufacturing Facility wholesaling, transferring, or processing into a Retail Marijuana Concentrate or Retail Marijuana Product any Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product from that Harvest Batch or Production Batch. Additional tests may include, but need not be limited to, screening for Pesticide, harmful chemicals, adulterants or other types of microbials, molds, metals, filth or residual solvents.

E. Exemptions

1. Retail Marijuana Concentrate. A Production Batch of Retail Marijuana Concentrate shall be considered exempt from this rule if the Retail Marijuana Products Manufacturing Facility that produced it does not wholesale or transfer any of portion of the Production Batch and uses the entire Production Batch to manufacture Retail Marijuana Product, except that a Solvent-Based Retail Marijuana Concentrate produced using butane, propane, ethanol, isopropanol, acetone or heptane must still be submitted for a residual solvent contaminant test.
2. CO<sub>2</sub> Only. A Retail Marijuana Products Manufacturing Facility shall not be required to have residual solvent testing conducted on the Product Batch of a Solvent-Based Retail Marijuana Concentrate if only CO<sub>2</sub> was used during the production of the Retail Marijuana Concentrate.

F. Required Re-Validation - Contaminants.

1. Material Change Re-validation. If a Retail Marijuana Cultivation Facility or a Retail Marijuana Product Manufacturing Facility makes a Material Change to its cultivation or production process, then it must have the first five Harvest Batches or Production Batches produced using the new standard operating procedures tested for all of the contaminants required by paragraph C of this rule regardless of whether its process has been previously validated regarding contaminants. If any of those tests fail, then the Retail Marijuana Establishment's process must be re-validated.
  - a. Pesticide. It shall be considered a Material Change if a Retail Marijuana Cultivation Facility begins using a new or different Pesticide during its cultivation process and the first five Harvest Batches produced using the new or different Pesticide must also be tested for Pesticide.
  - b. Solvents. It shall be considered a Material Change if a Retail Marijuana Products Manufacturing Facility begins using a new or different solvent or combination of solvents.
  - c. Notification. A Retail Marijuana Cultivation Facility or a Retail Marijuana Product Manufacturing Facility that makes a Material Change must notify the Retail Marijuana Testing Facility that conducts contaminant testing on the first five Harvest Batches or Production Batches produced using the new standard operating procedures.
  - d. Testing Required Prior to Wholesale, Transfer or Processing. When a Harvest Batch or Production Batch is required to be submitted for testing pursuant to this rule, the Retail Marijuana Cultivation Facility or a Retail Marijuana Product Manufacturing Facility that produced it may not

wholesale, transfer or process into a Retail Marijuana Concentrate or Retail Marijuana Product any of the Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product from that Harvest Batch or Production Batch.

2. Failed Contaminant Testing Re-Validation. If six of the 10 most recently tested Test Batches produced by a Retail Marijuana Cultivation Facility or a Retail Marijuana Product Manufacturing Facility fail contaminant testing, then the Retail Marijuana Establishment shall be required to re-validate its process.

G. Violation Affecting Public Safety. Failure to comply with this rule may constitute a license violation affecting public safety.

### **Basis and Purpose – R 1502**

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(IV), 12-43.4-202(3)(a)(VII), 12-43.4-202(3)(a)(X), 12-43.4-202(3)(a)(XI), 12-43.4-202(3)(a)(XII), 12-43.4-202(3)(b)(III), 12-43.4-202(3)(b)(IX), 12-43.4-202(3)(c)(VII), 12-43.4-402(4), 12-43.4-403(5), and 12-43.4-404(6), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VII). The purpose of this rule is to protect the public health and safety by establishing the mandatory testing portion of the Division's Retail Marijuana Sampling and Testing Program.

### **R 1502 – Retail Marijuana Testing Program – Mandatory Testing**

**This rule shall be effective on July 1, 2014.**

- A. Required Sample Submission. A Retail Marijuana Establishment may be required by the Division to submit a Sample(s) of Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product it possesses to a Retail Marijuana Testing Facility at any time regardless of whether its process has been validated and without notice.
  1. Samples collected pursuant to this rule may be tested for potency or contaminants which may include, but may not be limited to, Pesticide, microbials, molds, metals, filth, residual solvents, harmful chemicals and adulterants.
  2. When a Sample(s) is required to be submitted for testing, the Retail Marijuana Establishment may not sell, wholesale, transfer or process into a Retail Marijuana Concentrate or Retail Marijuana Product any Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product from the package, Harvest Batch or Production Batch from which the Sample was taken.
- B. Methods for Determining Required Testing
  1. Ongoing Testing. Once a Retail Marijuana Cultivation Facility's or a Retail Marijuana Product Manufacturing Facility's cultivation or production process has been validated regarding Contaminant Testing, the Division shall require Samples to be submitted for testing through any one or more of the following processes: random process, risk-based process or other internally developed process.
  2. Inspection or Enforcement Tests. The Division may require a Retail Marijuana Establishment to submit a Sample for testing if the Division has reasonable grounds to believe that:
    - a. Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product is contaminated or mislabeled;

- b. A Retail Marijuana Establishment is in violation of any product safety, health or sanitary law, rule or regulation; or
    - c. The results of a test would further an investigation by the Division into a violation of any law, rule or regulation.
  - 3. Beta Testing. Prior to October 1, 2014, the Division may require a Retail Marijuana Establishment to submit Samples from certain randomly selected Harvest Batches or Production Batches for potency or contaminant testing.
- C. Minimum Required Testing. Each Retail Marijuana Cultivation Facility and Retail Marijuana Product Manufacturing Facility shall be required to have Samples taken from at least 10% of the Harvest Batches or Production Batches it produces on an annual basis and have those Samples submitted to a Retail Marijuana Testing Facility to be tested for potency or contaminants.
- D. Additional Sample Types. The Division may also require a Retail Marijuana Establishment to submit Samples comprised of items other than Retail Marijuana, Retail Marijuana Concentrate or Retail Marijuana Product to be tested for contaminants which may include, but may not be limited to, Pesticide, microbials, molds, filth, residual solvents, harmful chemicals and adulterants. The following is a non-exhaustive list of the types of Samples that may be required to be submitted for contaminant testing:
  - 1. Specific plant(s) or any portion of a plant(s),
  - 2. Any growing medium, water or other substance used in the cultivation process,
  - 3. Any water, solvent or other substance used in the processing of a Retail Marijuana Concentrate,
  - 4. Any ingredient or substance used in the manufacturing of a Retail Marijuana Product;  
or
  - 5. Swab of any equipment or surface.
- E. Violation Affecting Public Safety. Failure to comply with this rule may constitute a license violation affecting public safety.

### **Basis and Purpose – R 1503**

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(IV), 12-43.4-202(3)(a)(VII), 12-43.4-202(3)(a)(X), 12-43.4-202(3)(a)(XII), 12-43.4-202(3)(b)(III), 12-43.4-202(3)(b)(IX), 12-43.4-202(3)(c)(V), 12-43.4-202(3)(c)(VI), 12-43.4-202(3)(c)(VII), 12-43.4-402(4), 12-43.4-403(5), and 12-43.4-404(6), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VII). The purpose of this rule is to protect the public health and safety by establishing the potency testing portion of the Division's Retail Marijuana Sampling and Testing Program.

### **R 1503 – Retail Marijuana Testing Program – Potency Testing**

**Paragraphs A, D and E of this rule shall be effective on May 1, 2014. Paragraphs B and C of this rule shall be effective on June 1, 2014.**

#### **A. Potency Testing – General**

1. Test Batches. A Test Batch submitted for potency testing may only be comprised of Samples that are of the same strain of Retail Marijuana or from the same Production Batch of Retail Marijuana Concentrate or Retail Marijuana Product.
2. Cannabinoid Profile. A potency test conducted pursuant to this rule must at least determine the level of concentration of THC, THCA, CBD, CBDA and CBN.

B. Potency Testing for Retail Marijuana.

1. Initial Potency Testing. A Retail Marijuana Cultivation Facility must have potency tests conducted by a Retail Marijuana Testing Facility on four Harvest Batches, created a minimum of three weeks apart, for each strain of Retail Marijuana that it cultivates.
  - a. The first potency test must be conducted on each strain prior to the Retail Marijuana Cultivation Facility wholesaling, transferring or processing into a Retail Marijuana Concentrate any Retail Marijuana of that strain.
  - b. All four potency tests must be conducted on each strain no later than December 1, 2014 or six months after the Retail Marijuana Cultivation Facility begins cultivating that strain, whichever is later.
2. Ongoing Potency Testing. After the initial four potency tests, a Retail Marijuana Cultivation Facility shall have each strain of Retail Marijuana that it cultivates tested for potency at least once every six months.

C. Potency Testing for Retail Marijuana Concentrate. A Retail Marijuana Cultivation Facility or Retail Marijuana Products Manufacturing Facility must have a potency test conducted by a Retail Marijuana Testing Facility on every Production Batch of Retail Marijuana Concentrate that it produces prior to wholesaling, transferring or processing into a Retail Marijuana Product any of the Retail Marijuana Concentrate from that Production Batch.

D. Potency Testing for Retail Marijuana Product

1. Potency Testing Required. A Retail Marijuana Products Manufacturing Facility shall have potency tests conducted by a Retail Marijuana Testing Facility on every Production Batch of Retail Marijuana Product that it produces prior to transferring or wholesaling any of the Retail Marijuana Product from that Production Batch unless:
  - a. The Retail Marijuana Products Manufacturing Facility has successfully process validated a Single-Serving Edible Retail Marijuana Product for potency and homogeneity and remained in compliance with the process validation requirements of subparagraphs (E)&(F) of this rule. Only Single-Serving Edible Retail Marijuana Products are eligible for process validation regarding potency and homogeneity.
2. Required Tests. Potency tests conducted on Retail Marijuana Product must determine the level of concentration of the required cannabinoids and whether or not THC is homogeneously distributed throughout the product.
3. Partially Infused Retail Marijuana Products. If only a portion of a Retail Marijuana Product is infused with Retail Marijuana, then the Retail Marijuana Products Manufacturing Facility must inform the Retail Marijuana Testing Facility of exactly

which portions of the Retail Marijuana Product are infused and which portions are not.

E. Validation of Process - Potency and Homogeneity - Single-Serving Edible Retail Marijuana Product.

1. A Retail Marijuana Products Manufacturing Facility may process validate potency and homogeneity for each Single-Serving Edible Retail Marijuana Product it manufactures. If the Retail Marijuana Products Manufacturing Facility elects not to process validate for potency and homogeneity, then it must comply with the potency testing requirements of R 1503(D)(1)&(2). Multiple-Serving Edible Retail Marijuana Products are not eligible for process validation and must comply with the potency testing requirements of R 1503(D)(1)&(2).
2. A Retail Marijuana Products Manufacturing Facility's production process shall be deemed valid regarding potency and homogeneity if the first four Production Batches that it produces in no longer than an eight-week period pass all potency tests required by R 1503(D)(2). Each Test Batch submitted for Process Validation must be submitted at least six days apart and contain Samples from entirely different Production Batches.
3. For a Single-Serving Edible Retail Marijuana Product to maintain its validated status, the Retail Marijuana Products Manufacturing Facility must submit a Sample from two separate Production Batches of the validated product on a quarterly basis after the initial validation of process. If any of the Samples fail potency testing, then the Retail Marijuana Products Manufacturing Facility's process must be re-validated.

F. Required Re-Validation - Potency and Homogeneity - Single-Serving Edible Retail Marijuana Product.

1. Material Change Re-Validation. If a Retail Marijuana Products Manufacturing Facility elects to process validate any Single-Serving Edible Retail Marijuana Product for potency and homogeneity and it makes a Material Change to its production process, then the Retail Marijuana Products Manufacturing Facility must re-validate the production process.
  - a. New Equipment. It shall be considered a Material Change if the Retail Marijuana Products Manufacturing Facility begins using new or different equipment for any material part of the production process.
  - b. Notification. A Retail Marijuana Product Manufacturing Facility that makes a Material Change to the production process of a validated Single-Serving Edible Retail Marijuana Product must notify the Retail Marijuana Testing Facility that conducts potency and homogeneity testing on the first four Production Batches produced using the new standard operating procedures.
  - c. Testing Required Prior to Wholesale or Transfer. When a Production Batch is required to be submitted for testing pursuant to this rule, the Marijuana Product Manufacturing Facility that produced it may not wholesale or transfer Retail Marijuana Product from that Production Batch unless or until it obtains a passing test.

G. Violation Affecting Public Safety. Failure to comply with this rule may constitute a license violation affecting public safety.

# STATE OF COLORADO

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**DEPARTMENT OF REVENUE**

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## **Colorado Department of Revenue Marijuana Enforcement Division**

John W. Hickenlooper  
Governor

Barbara J. Brohl  
Executive Director

### **Emergency Rules:**

#### **Revised Rules, Retail Marijuana, 1 CCR 212-2**

Rule R 103 – Definitions

Rule R 604 – Retail Marijuana Products Manufacturing Facility: Health and Safety Regulations (rule re-named)

Rule R 712 – Retail Marijuana Testing Facility: Mandatory Sampling and Testing Program

Rule R 1004 – Packaging and Labeling Requirements of a Retail Marijuana Product by a Retail Marijuana Products Manufacturing Facility

Rule R 1006 – Packaging and Labeling of Retail Marijuana Product by a Retail Marijuana Store

Rule R 1501 – Retail Marijuana Testing Program – Contaminant Testing (rule re-named)

Rule R 1502 – Retail Marijuana Testing Program – Mandatory Testing

Rule R 1503 – Retail Marijuana Testing Program- Potency Testing

#### **New Rules, Retail Marijuana, 1 CCR 212-2**

Rule R 1004.5 – Packaging and Labeling Requirements of a Retail Marijuana Product by a Retail Marijuana Products Manufacturing Facility

Rule R 1006.5 – Packaging and Labeling of Retail Marijuana Product by a Retail Marijuana Store

### **Statement of Emergency Justification and Adoption**

Pursuant to sections 24-4-103 and 12-43.4-202, C.R.S, I, Barbara J. Brohl, Executive Director of the Department of Revenue and State Licensing Authority, hereby adopt the aforementioned revised Retail Marijuana Rules, which are attached hereto.

Section 24-4-103(6), C.R.S., authorizes the State Licensing Authority to issue emergency rules if the State Licensing Authority finds that the immediate adoption of the rule is imperatively necessary to comply with a state law or for the preservation of public health, safety, or welfare and compliance with the requirements of section 24-4-103, C.R.S., would be contrary to the public interest

I find that the immediate adoption of these revised rules is necessary to comply with the statutory mandates of the Retail Marijuana Code and to properly regulate and control the cultivation, manufacture, distribution, and sale of retail marijuana.

### **Statutory Authority**

The statutory authority for these rules is found at subsections 12-43.4-202(2)(b), 12-43.4-202(3)(a)(II), 12-43.4-202(3)(b)(III), and 12-43.4-202(3)(b)(IX); and Colorado Constitution Article XVIII, Subsection 16(5)(a)(II).

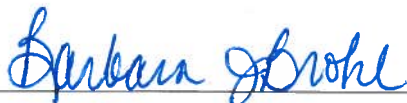
### **Purpose**

There are several purposes necessitating the revisions and additions to 1 CCR 212-2 on an emergency basis. The primary purpose is to help the State Licensing Authority effectively regulate the retail marijuana industry. For instance, the new and revised restrictions and testing requirements related to edible retail marijuana products help ensure the public is adequately protected when they purchase retail marijuana products. As one example, the State Licensing Authority is clarifying what constitutes a serving size for uniformity among the industry and is requiring that certain tests be completed before products are sold to consumers, thereby more adequately protecting the general welfare of the public.

The State Licensing Authority is adopting these rules on an emergency basis to assure the public is provided with notice of requirements related to edible retail marijuana products as soon as possible to ensure the safety of the public is protected. Adoption of these emergency rules will clarify standard serving sizes for edible products.

Simultaneously with the adoption of these emergency new and revised rules, the State Licensing Authority has filed a Notice of Rulemaking to commence the permanent rulemaking process. The process will also include the opportunity for substantial stakeholder and public participation, including working group meetings, the opportunity to submit written views and comments and the opportunity for public testimony at the rulemaking hearing.

These emergency rules are effective immediately upon adoption. The prior versions of Rules R 103, R 604, R 712, R 1004, R 1006, R 1501, R 1502, and R 1503, are hereby repealed and replaced by the attached emergency rules. New emergency Rules R 1004.5, and R 1006.5, 1 CCR 212-2, are hereby adopted. These emergency rules will remain in effect until replaced by permanent rules.

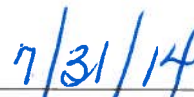


Barbara J. Brohl

Executive Director

Colorado Department of Revenue

State Licensing Authority



Date



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**Department of Law**  
**Office of the Attorney General**

Tracking number: 2014-00774

**Opinion of the Attorney General rendered in connection with the rules adopted by the**  
**Marijuana Enforcement Division**

**on 07/31/2014**

**1 CCR 212-2**

**RETAIL MARIJUANA CODE**

The above-referenced rules were submitted to this office on 07/31/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

August 20, 2014 14:20:54

A handwritten signature in black ink, appearing to read "DD", is written over a light blue rectangular background.

**John W. Suthers**  
Attorney General  
by Daniel D. Domenico  
Solicitor General

## **Emergency Rules Adopted**

### **Department**

Department of Education

### **Agency**

Colorado State Board of Education

### **CCR number**

1 CCR 301-71

### **Rule title**

1 CCR 301-71 RULES FOR THE ADMINISTRATION, CERTIFICATION AND  
OVERSIGHT OF COLORADO ONLINE PROGRAMS 1 - eff 08/13/2014

### **Effective date**

08/13/2014

## DEPARTMENT OF EDUCATION

### Colorado State Board of Education

## RULES FOR THE ADMINISTRATION, CERTIFICATION AND OVERSIGHT OF COLORADO ONLINE PROGRAMS

### 1 CCR 301-71

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

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#### 1.0 Statement of Basis and Purpose.

Following passage of HB14-1382, the State Board of Education finds that to meet the timeline therein, it is necessary to adopt emergency rules amending Rule 8.00 concerning documentation for the October count date. Additionally, in so doing, the State Board also find it necessary to amend the definitions of online program and online school to align with HB14-1382.

Sections 2.03.2 and 8.01 of these rules were amended to incorporate new statutory requirements established by H.B. 12-1090 (concerning the annual count date for establishing total pupil enrollment of each public school) in section 22-54-103 (10.5) (a), C.R.S.

Section 2.09 of these rules was amended and section 2.10 was added to incorporate new definitions of an online program and online school as established by HB 12-1240 (concerning statutory changes to K-12 education) in section 22-2-130, C.R.S.

Section 2.12 of these rules was amended to incorporate a revised definition of a single-district online program as established by HB 12-1212 (concerning the designation of an online program as a multi-district program) in section 22-30.7-102, C.R.S.

These rules were amended to incorporate changes to financial reporting and accountability required by HB 11-1277 (concerning statutory changes involving K-12 education).

These rules were amended to align the evaluation criteria for Online Programs with the evaluation criteria established by SB 09-163 (the Education Accountability Act of 2009).

The statutory basis for these rules is found in sections 22-30.7-105(3)(b), 22-30.7-106(4), 22-30.7-106(5), and 22-30.7-106(6), C.R.S.

Pursuant to these statutes, the State Board of Education shall promulgate rules to achieve the following purposes, including but not limited to:

- (a) Establishing quality standards for online programs;
- (b) Promoting Online Program student participation in statewide assessments;
- (c) Establishing criteria to be used by the Online Division in certifying Multi-District Online Programs;
- (d) Establishing processes and timelines by which a prospective Authorizer may apply to the Online Division for certification of a Multi-District Online Program;

- (e) Establishing an expedited procedure for the approval or denial of certification for Multi-District Online Programs that were operating as of January 1, 2007;
- (f) Establishing a timeline by which an Authorizer of an online program shall submit a report to the Online Division;
- (g) Establishing a process for responding to a corrective action notice resulting from an audit of annual reporting;
- (h) Providing a process for notification to the State Board with recommendations for actions the State Board may take to address a situation of non-response to a corrective action notice; and
- (i) Establishing a process and timeline for continual review of the Multi-District Online Program after certification.

## **2.0 Definitions**

- 2.01 "Authorizer" means an entity that authorizes an online program. "Authorizer" shall include a school district, any group of two or more school districts, a board of cooperative services created pursuant to §22-5-104 C.R.S., or the state Charter School Institute established pursuant to §22-30.5-503, C.R.S.
- 2.02 This definition of "complete educational program" is applicable to all public school educational programs that derive their support, in whole or in part, from moneys raised by a general state, county, or School District tax.
  - 2.02.1 "Complete Educational Program" means for the purposes of §22-32-109(2) C.R.S., only, a sequential k-12 program of instruction, managed and operated by a local school district, for the education of a child that is intended to qualify for per pupil revenues under the Public School Finance Act of 1994 and, for children under seventeen years of age, qualifies the child by his or her attendance to be in compliance with Colorado compulsory school attendance laws.
  - 2.02.2 For purposes of §22-32-109(2) C.R.S., the term "Complete Educational Program" shall exclude an online education program as defined by rule 2.10 and which is not delivered in a Learning Center as defined in rule 2.06.
  - 2.02.3 For purposes of §22-32-109(2) C.R.S., the term "Complete Educational Program" shall also exclude a Learning Center as defined by rule 2.06, which is operating in the district pursuant to an MOU negotiated with the district, or pursuant to an order of the State Board of Education under rule 10.07.
- 2.03 "Course Completion Requirements," for the purposes of transcript recording and statistical enrollment reporting, means the student completion of a course based on meeting the Authorizer's approved academic content work and testing requirements.
  - 2.03.1 The course may be counted as having been completed when academic content work, as based upon authorizer accreditation curriculum standards, has been completed.
  - 2.03.2 Any student counted as an enrollment for the pupil enrollment count date, as defined in section 22-54-103 (10.5) (a), C.R.S., must be included in the course completion rate data.
  - 2.03.3 For calculation purposes, any student who leaves the course within the first 25% of said course shall not be counted.

- 2.03.4 Mastery or passing a course is not a requirement of course completion, but mastery levels should be consistent with the Authorizer.
- 2.04 "Department" means the Department of Education created and existing pursuant to §24-1-115, C.R.S.
- 2.05 "Learning Center" means a facility in which a consistent group of students meets more often than once per week under the supervision of a Teacher or Mentor for a significant portion of a school day for the purpose of participating in an online program. A group of Parents and students meeting repeatedly, occasionally, and informally, even if facilitated by a school, shall not constitute a "Learning Center", and a private home shall not be considered a "Learning Center" under any circumstances pursuant to §22-30.7-102 C.R.S.
- 2.05.1 For purposes of these rules, a "significant portion of the school day for the purpose of participating in an online program" means that students of the Learning Center must be actively participating in the curricula of the certified online program for more than fifty-percent of the school day.
- 2.05.2 A curriculum that is not part of the certified online program must be non-religious and non-sectarian and may only be offered for less than fifty-percent of the school day.
- 2.05.3 In no event shall the parents or guardians of the students enrolled in the Online Program be required to pay tuition on behalf of such students for the Online Program at such Learning Center.
- 2.06 "Mentor" means an individual who is responsible for providing supervision at a Learning Center. A "Mentor" shall not be required to be a licensed Teacher but shall, at a minimum, satisfy the requirements specified for a paraprofessional as such requirements are described in the federal law "No Child Left Behind Act of 2001", 20 U.S.C. §6301 et seq.
- 2.07 "Multi-District Online Program" means an Online Program that serves a student population drawn from two or more school districts.
- 2.08 "Online Division" means the division of online learning created in the Department pursuant to §22-30.7-103, C.R.S.
- 2.09 "Online Program" means a full-time education program authorized pursuant to Title 22 of the Colorado Revised Statutes that delivers a sequential program of synchronous or asynchronous instruction directed by a teacher primarily through online digital learning strategies that provide students choice over time, place, and path, and teacher-guided modality of learning. . "Online Program" does not include a supplemental program. Accountability for each student in an online program is attributed back to a designated school that houses the online program. An Online Program with one hundred or more students is an Online School and not an Online Program.
- 2.10 "Online School" means a full-time, education school authorized pursuant to Title 22 of the Colorado Revised Statutes that delivers a sequential program of synchronous or asynchronous instruction directed by a teacher primarily through Online digital learning strategies that provide students choice over time, place, and path, and teacher-guided modality of learning. An Online School has an assigned school code and operates with its own administrator, a separate budget, and a complete instructional program. An Online School is responsible for fulfilling all reporting requirements and is held to state and federally mandated accountability processes.
- 2.11 "Parent" means a biological parent, adoptive parent, or legal guardian.

- 2.12 "Single-District Online Program" means an Online Program that serves only students who reside within a single school district.
- 2.13 "Standard MOU Form" means the standard Memorandum of Understanding Form adopted by the State Board pursuant to section §22-30.7-111 (5) C.R.S.
- 2.14 "State Board" means the State Board of Education created and existing pursuant to section 1 of Article IX of the Colorado State Constitution.
- 2.15 "Supplemental Program" means a program that offers one or more online courses to students to augment an educational program provided by a school, school district, charter school, or board of cooperative services.
- 2.16 "Teacher" means any person who holds a Teacher's license issued pursuant to the provisions of article 60.5 of Title 22, CRS and who is employed to instruct, direct, or supervise the instructional program, "Teacher" includes those persons employed by a charter school as a Teacher pursuant to a waiver granted to the charter school by the State Board pursuant to §22-30.5-105(3), C.R.S., or who are employed by a school district as a Teacher pursuant to a waiver granted to a school district pursuant to §22-2-117, C.R.S.

### **3.0 Quality Standards for Online Programs.**

- 3.01 In supporting and, evaluating Online Programs, and in certifying Multi-District Online Programs, the Online Division will provide guidance related to, and use the following Quality Standards.
- 3.02 Consistent with its Authorizer or school district, Online Programs shall meet or exceed the following quality standards in the administration of program and delivery of curriculum:
- 3.02.1 The Online Program involves representatives of the Online Program's community, as well as staff, in a collaborative process to develop and communicate the Online Program's vision, mission, goals and results, in a manner appropriate to the online model for that program. The Online Program provides leadership, governance, and structure to support this vision and these supports are used by all staff to guide the decision-making.
- 3.02.2 [Expired 05/15/2011 per Senate Bill 11-078]
- 3.02.3 The Online Program has, or has a plan and timeline in place to accomplish, the technological infrastructure capable of meeting the needs of students and staff, and of supporting teaching and learning. The Online Program uses a variety of technology tools and has a user-friendly interface. The Online Program meets industry accepted accessibility standards for interoperability and appropriate access for learners with special needs. Technological support structures and programs are in place to reduce barriers to learning for all students.
- 3.02.4 The Online Program has, and implements, a technology plan that includes (but is not limited to) documentation that all students and Parents know and understand acceptable use of the internet in accordance with all federal and state statutes. When providing direct services (for example, ISP, computer equipment or "at location") to students, the Online Program will use filtering software to prevent access to inappropriate materials.
- 3.02.5 Online Programs must comply with all statutory requirements, including the existing budgetary reporting procedures under state law, as well as being consistent with the format required by the authorizing entity. Budgets and accounting records must be transparent, open to the public, and demonstrate support of student academic achievement.

- 3.02.6 Online Program demonstrates levels of attainment of statewide performance indicators that meet expectations established by the Department's annual performance review as described in §22-11-210, C.R.S.
- 3.02.7 The Online Program's Teachers use ongoing, research based formative and summative assessments to measure student academic performance. Students have varied opportunities to demonstrate mastery of skills, show academic progress, and receive meaningful feedback on their learning.
- 3.02.8 An Online Program has a policy regarding course completion.
- 3.02.9 An Online Program follows policies for tracking enrollment, attendance, participation, and truancy. The policy includes documentation of Teacher / student interaction.
- 3.02.10 The Online Program has a policy, and the infrastructure to store, retrieve, analyze and report, required student, Teacher, financial, and other required data collections.
- 3.02.11 The Online Program has a policy providing guidance counseling services as appropriate to grade level and student need.
- 3.02.12 The Online Program has a policy guiding school/home communication about student and program progress, program governance, and program accountability that is relevant, regular, and available in native language where reasonable.
- 3.02.13 Instructional strategies, practices, and content address various learning needs and styles of students. The Online Program uses a body of evidence to identify advanced, under-performing, economically disadvantaged, or other special needs students. The Online Program will work with its Authorizer to ensure that support structures and programs, including but not limited to, Title I, ESL, Special Ed., and Gifted and Talented, are integrated into the school's instructional program to promote and support student learning.
- 3.02.14 The Online Program evaluates the degree to which it achieves the goals and objectives for student learning. There is a systematic process for collecting, disaggregating, managing, and analyzing data that enables the Online Program's leadership, Teachers, Parents, students, community members and other stakeholders to determine areas of strength and challenge. The data collected are analyzed using a systems approach, and the analysis includes the use of the school performance reports required pursuant to §22-11-503, C.R.S.
- 3.02.15 The Online Program shall ensure that background checks in accordance with law are performed on all volunteers and paid staff, including but not limited to Mentors, Teachers, Administrators, or any other persons in unsupervised contact with the student, except Parents supervising their children's educational program.

#### **4.0 Multi-District Online Program Application Criteria**

- 4.01 The Certification of the Online Program does not constitute approval of operations for the Online Program. The approval of the Online Program is the responsibility of the Authorizer. The Online Program may begin student instruction and operations only after approval by the Authorizer and receipt of certification from the Department.
- 4.02 The Authorizer of the Multi-District Online Program must include in its application evidence of adequate resources and capacity to oversee the Online Program, or evidence of a plan and timeline demonstrating that adequate resources and capacity for oversight of the Online Program

will be in place by the beginning of student instruction. Capacity will be determined based upon the following components:

- 4.02.1 Curriculum and instruction;
  - 4.02.2 Use of software applications and technology;
  - 4.02.3 Data gathering analysis and reporting;
  - 4.02.4 Human resources management;
  - 4.02.5 Financial management, facilities management, and risk management.
  - 4.02.6 Other relevant public education administrative functions as submitted by the Multi-district Online Program, to be reviewed as appropriate by the Unit of Online Learning of CDE.
- 4.03 The Authorizer, in its application, will document and verify an acceptable level of compliance by the Online Program to the quality standards as listed in §3.02 of these rules.
- 4.03.1 For new online programs the Authorizer, in its application, will provide evidence of a plan and timeline that the quality standards will be met as listed in §3.02 of these rules.
- 4.04 The plan for operating and monitoring the Online Program must be agreed to by the Authorizer and the principal, director, charter school governing board, or other chief administrator of the Multi-District Online Program, and must be included with the application. The plan must include specific information on how the following items are addressed in the delivery of the Online Program:
- 4.04.1 A statement of the Online Program's vision, mission and goals;
  - 4.04.2 The organizational structure and governance of the Online Program, including governing board and program policies and procedures, including procedures for public access to records;
  - 4.04.3 Equitable access for all students, within the parameters for operating and monitoring the Multi-District Online Program;
  - 4.04.4 Guidance counseling services for all students enrolled in the Multi-District Online Program in accordance with Authorizer policy;
  - 4.04.5 Student academic credit policies consistent with the Authorizer;
  - 4.04.6 Student achievement and attendance policies, including the monitoring of graduation and dropout rates as well as Course Completion rates pursuant to the policy referenced in §3.02.8 of these rules and the definition as defined in rule 2.04;
  - 4.04.7 Student records policies and procedures consistent with the Authorizer pursuant to SB-07-215;
  - 4.04.8 Student admission and placement policies and procedures;
  - 4.04.9 Staff development plans;
  - 4.04.10 Student services including tutorial support consistent with the Authorizer;
  - 4.04.11 Staff, student, and parent handbooks;



- 4.04.12 Employment and contractor policies and procedures;
  - 4.04.13 Annual budgeting and finance practices;
  - 4.04.14 Facility plans, including any contemplated physical sites;
  - 4.04.15 Risk management, including school safety, staff policies, and background checks for all employees as required by law;
  - 4.04.16 Data development analysis and reporting; and
  - 4.04.17 Policies and procedures for facilitating communication between the Multi-District Online Program, Parents, community, and school districts in which students that are enrolled in the Multi-District Online Program reside.
- 4.05 The Authorizer will include in its application a list of the Learning Centers for which an MOU has been agreed upon by the local school district and the Online Program, including the name, address, facility contact, and telephone number for each, and evidence of compliance by the Learning Center with section §2.06 of these rules.

## **5.0 Procedure and Timeline for Multi-District Online Program Certification by the State Board.**

- 5.01 Authorizers must submit applications for certification of Multi-District Online Programs to the Online Division at the Department.
- 5.02 For Multi-District Online Programs intending to begin operations on or after the 2009-2010 school year, submissions will be reviewed twice a year, with submissions accepted no later than January 2nd and April 1st (or closest business day thereafter) of each year. A decision will be made based upon rubrics established by the Online Division.
- 5.03 The response will be given to the Authorizer within sixty days of January 2nd and April 1st (or closest business day thereafter) with detailed reasons for denial if applicable.
- 5.04 For Multi-District Online Programs intending to operate during the 2008-2009 school year, applications for certification of Multi-District Online Programs will be accepted no later than April 1, 2008 (or closest business day thereafter). Responses will be given within sixty days from April 1st (or closest business day thereafter) 2008.
- 5.05 Authorizers of Multi-District Online Programs that were operating as of January 1, 2007, may submit applications for certification of said Multi-District Online Program to the Online Division on April 1, 2008 (or closest business day thereafter) and will receive an expedited response within 30 days from April 1st (or closest business day thereafter) 2008.

## **6.0 Procedure and Timeline for Submitting Annual Financial and Accounting Reports**

- 6.01 Pursuant to § 22-30.7-109.5, C.R.S., each Online Program shall submit to its Authorizer an annual financial and accounting report, which the Authorizer shall submit to the Department on or before December 31st of each year, or up to sixty days later, if an extension is requested pursuant to § 29-1-606 (4), C.R.S. Said report shall be submitted in accordance with 1 CCR 301-39, Amended Rules for Administration of Public School Finance, in section 2254-R-7.00.
- 6.02 Online Programs that are charter schools and already submit the financial information required pursuant to § 22-30.5-109 (1), C.R.S., may submit a single financial report to satisfy requirements for both charter schools and Online Programs.

## **7.0 Timeline and Procedure for the Amendment of a Certification of a Multi-District Online Program**

- 7.01 A Multi-District Online Program shall notify its authorizer and the Online Division within the Department of any intent to amend the program's application for certification, which shall include any intent to expand grade levels served by the program, any intent to change education service providers, or other intended changes, as defined by the State Board.
- 7.02 If the Department concludes that the Online Program should not be permitted to amend its application for certification, based on the quality standards for Online Programs outlined in section 3.02 of these rules, the Department shall notify the Authorizer of the Online Program of its decision within thirty (30) days of receiving the notification from the Online Program. The Authorizer shall then have thirty (30) days to appeal the Department's decision to the State Board, pursuant to the State Board's administrative policies.

## **8.0 Process for Documenting Students Enrolled in an Online Program or Online School**

- 8.01 Pursuant to HB14-1382, , a student participating in an Online program or Online school is subject to the compulsory attendance requirements as provided in article 33 of the Colorado Revised Statutes and is deemed to comply with the compulsory attendance requirements through participation in an online program or online school. Each online program and online school must document a student's compliance with compulsory attendance requirements during the official count window..
- 8.01.1 For the 2014-15 school year, examples of valid documentation that an Authorizer may require include but are not limited to:
- 8.01.1.1 Student management system login including student name, date, time, and documentation that specifically addresses course content and student work;
  - 8.01.1.2 Student management system login including student name, date, time, with a corresponding email documenting specific course content and student work; and
  - 8.01.1.3 Student management system login including student name, date, time, with corresponding documentation of instant messaging, or web conferencing with specific course content and student work.
- 8.01.2 Examples of invalid documentation include but are not limited to:
- 8.01.2.1 Any student system login not including student name, date, time, or documentation that does not specifically address course content and student work;
  - 8.01.2.2 An email that does not have documented corresponding system login information or does not include specific course content and student work; and
  - 8.01.2.3 Any documentation that can not specifically verify individual student login, date, time, or course content and student work;
- 8.01.3. Thereafter, the determination of full-time or part-time status is based upon the minimum number of hours provided for a student to receive instruction. Minimum hours can be based on the number of hours per day (or week) required to earn an equivalent number of credits in a traditional classroom setting.

- 8.01.4 The Online Program must have a calendar that reasonably aligns with the beginning date of the school year of the Authorizer that operates it or has been approved for an alternative calendar by the Authorizer and the Department.
- 8.01.5 A full time student must have a schedule that provides for a minimum of three hundred and sixty (360) hours of teacher-pupil instruction per semester to receive full-time funding pursuant to 2254-R-5.04(3).
- 8.01.6 A part time student must have a schedule that provides for a minimum of ninety (90) hours of teacher-pupil instruction per semester to receive part-time funding pursuant to 2254-R-5.06(3).
- 8.02 For the 2014-15 school year and thereafter, if an Authorizer wishes to accept forms of documentation other than those set forth in 8.01 hereinabove, the Authorizer must adopt policies tracking student enrollment, attendance, and participation as set forth in 3.02.9 above and may document students' attendance and participation in educational activities in a manner the Authorizer deems appropriate to support student learning. Acceptable forms of documentation include, but need not be limited to, assessment, orientation, and induction activities, in-person educational instruction; and synchronous and asynchronous internet-based educational activities. On a form provided by the Department, the Authorizer must provide Assurances to the Department the Authorizer's verification of the students' attendance and participation in the Online Program or Online School. For the 2014-15 school year, these assurances need to be provided to the Colorado Department of Education no later than September 22, 2014. Permanent rules will establish an annual deadline for establishing policies and submitting assurances.
- 8.02 Thereafter, the determination of full-time or part-time status is based upon the minimum number of hours provided for a student to receive instruction. Minimum hours can be based on the number of hours per day (or week) required to earn an equivalent number of credits in a traditional classroom setting.
- 8.03 The Online Program must have a calendar that reasonably aligns with the beginning date of the school year of the Authorizer that operates it or has been approved for an alternative calendar by the Authorizer and the Department.
- 8.04 A full time student must have a schedule that provides for a minimum of three hundred and sixty (360) hours of teacher-pupil instruction per semester to receive full-time funding pursuant to 2254-R-5.04(3).
- 8.05 A part time student must have a schedule that provides for a minimum of ninety (90) hours of teacher-pupil instruction per semester to receive part-time funding pursuant to 2254-R-5.06(3).
- 8.06 An Online Program must verify and document student residency in the State of Colorado upon enrollment and annually thereafter and retain a copy of the document or written statement offered as verification in the student's mandatory permanent record. Colorado residency is determined by the student and Parent or legal guardian currently residing within the State of Colorado boundaries, except for students of military families pursuant to §8.06.5 of these rules. Reasonable evidence of residency may be established by documentation including, but not limited to, any of the following:
- 8.06.1 Property tax payment receipts;
- 8.06.2 Rent payment receipts;

8.06.3 Utility service payment receipts; or

8.06.4 Written Statement of Residency executed by the student's parent/guardian. The written statement of residency should follow §1-2-102(a) and (b) C.R.S. and may be satisfied by a statement such as: "I, \_\_\_\_\_, swear and affirm under penalty of perjury that I am a resident of the State of Colorado."

8.06.5 A member or dependent of a member of the United States Armed Services shall be eligible to participate in an Online Program, notwithstanding the length of his or her residency, upon moving to Colorado on a change of station basis.

8.06.6 A member or dependent of a member of the United States Armed Services shall be eligible to participate in an Online Program, upon moving out of Colorado on a change of station basis as long as the member of the United States Armed Services qualifies for Colorado residency.

8.06.7 In order to meet residency requirements, a member or dependent of a member of the United States Armed Services must maintain Colorado as their state of legal residence for tax purposes, and voters must maintain Colorado voter registration.

8.07 The Online Program must comply with all of the state financial and budget rules, regulations, and financial reporting requirements with which the Authorizer is required to comply, including but not limited to annual completion of a governmental audit that complies with the requirements of the Department.

9.0 (Reserved)

## **10.0 Notice and Right of Appeal for Refusal to Enter into an MOU agreement.**

10.01 A school board may refuse to enter into a memorandum of understanding with a Multi-District Program only on the following grounds:

10.01.1 If the Standard MOU Form provided by the Multi-District Program failed to satisfy the requirements of §22-30.7-111(1)(b), C.R.S.; or

10.01.2 If the school board reasonably determines that the Multi-District Program is contrary to the best interests of the pupils, parents, community, or school district.

10.01.3 The school district shall be required to state its reasons for determining that the multi-district program is contrary to the best interests of the pupils, parents, community or school district.

10.02 If a school board refuses to enter into a memorandum of understanding for the operation of a Learning Center, it must provide the applicant with a detailed statement of refusal. The applicant may appeal the decision of the school board to the State Board by submitting a notice of appeal to the State Board within fourteen days after receipt of notice of the school board's decision. The applicant shall include a brief statement in the notice of appeal of the reason(s) it contends the school board's denial was in error. The appeal will proceed in accordance with the scheduling order to be issued by the Department on behalf of the State Board.

10.03 Pursuant to the timeline set forth by the State Board order,

1. The applicant shall submit a brief in support of the appeal to the State Board and the school board shall submit a brief in opposition to the appeal.

2. The applicant may submit a reply brief to the State Board after the school board submits its brief in opposition to the appeal.
  3. The State Board, in its sole discretion, may request an oral presentation on the matter.
- 10.04 Within forty-five days after receipt of the notice of appeal by the State Board, and after reasonable public notice, the State Board shall review the decision of the local board of education and make its findings. The State Board's review of the decision shall be without a hearing; except that the State Board may, in its discretion, choose to request oral presentations from the parties.
  - 10.05 If the State Board finds that the local board's decision was contrary to the best interests of the pupils, parents, community, or school district, the State Board shall issue an order directing the school district to enter into a final memorandum of understanding with the Multi-District Online Program regarding the placement of one or more Learning Centers within the school district and to use the Standard MOU Form provided pursuant to §22-30.7-111 C.R.S.
  - 10.06 The Memorandum of Understanding must be entered into by the District within thirty days after receipt of the State Board's order.
  - 10.07 If the State Board finds that the local board's decision was in the best interest of the pupils, parents, community, or school district, the State Board will issue a notice to uphold the decision of the local board.
  - 10.08 The decision of the State Board shall be final and not subject to further agency appeal.
  - 10.09 For each new Learning Center operated by the Online Program, within thirty days of acceptance, the Authorizer or Online Program will submit to the Online Division the name, address, facility contact, and telephone number and evidence of compliance by the Learning Center with section §2.06 of these rules.
-

On August 13, 2014 at its regularly scheduled meeting the State Board of Education voted determined that immediate adoption of the amendments to the Rules for the Administration, Certification, and Oversight of Colorado Online Programs (1 CCR 301-71) is imperatively necessary in order to comply with HB 14-1382 which allows for flexibility in the documentation of the October Count.

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**State of Colorado**

**Department of Law**

**Office of the Attorney General**

Tracking number: 2014-00807

**Opinion of the Attorney General rendered in connection with the rules adopted by the  
Colorado State Board of Education**

**on 08/13/2014**

**1 CCR 301-71**

**RULES FOR THE ADMINISTRATION, CERTIFICATION AND OVERSIGHT OF COLORADO  
ONLINE PROGRAMS**

The above-referenced rules were submitted to this office on 08/15/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

A handwritten signature in black ink, appearing to read "JWS", is written over a light blue rectangular background.

**John W. Suthers**

Attorney General

by Daniel D. Domenico

Solicitor General

August 27, 2014 16:48:14

## **Emergency Rules Adopted**

### **Department**

Department of Education

### **Agency**

Colorado State Board of Education

### **CCR number**

1 CCR 301-96

### **Rule title**

1 CCR 301-96 Rules for the Instruction in CPR in Public Schools Grant Program 1 - eff  
08/13/2014

### **Effective date**

08/13/2014



**COLORADO STATE BOARD OF EDUCATION**  
**Department of Education**  
**1 COLORADO CODE OF REGULATION 301-96**  
**EMERGENCY RULES FOR INSTRUCTION IN**  
**CARDIOPULMONARY RESUSCITATION IN PUBLIC SCHOOLS**  
**GRANT PROGRAM**  
**AND REQUIREMENT FOR CERTIFICATION OF PUBLIC SCHOOL ATHLETIC**  
**COACHES IN CARDIOPULMONARY RESUSCITATION**

**Authority:** Article IX, Section 1, Colorado Constitution. 22-2-106(1)(a) and (c); 22-2-107(1)(c); 22-7-409(1.5); 22-1-129 and 22-1-125.5 of the Colorado Revised Statutes (C.R.S.).

**1.00 Statement of Basis and Purpose.**

The statutory basis for these emergency rules adopted on August 14, 2014 is found in 22-2-106(1)(a) and (c), State Board Duties; 22-2-107(1)(c), State Board Powers; 22-1-129(3) C.R.S., Instruction in Cardiopulmonary Resuscitation and the Use of Automated External Defibrillators; and 22-1-125.5(2), C.R.S., Requirement for Certification of Public School Athletic Coaches in Cardiopulmonary Resuscitation.

The Cardiopulmonary Resuscitation in Public Schools Act requires the State Board of Education to promulgate rules for the implementation of the program, including at a minimum: The process by which a local education provider may apply for and receive grant moneys pursuant to this section, including application requirements and deadlines; the number and amount of each grant and whether grant moneys will be awarded in the order applications are received or through some other method; the process for achieving a balanced distribution of grant moneys to applicants including rural, urban, and suburban local education providers; and procedures for monitoring a local education provider's compliance with the provisions of this section and specifically that moneys awarded pursuant to this section are used for reasonable costs associated with psychomotor-skills-based cardiopulmonary resuscitation training and training on the use of automated external defibrillators, including but not limited to training materials and the temporary employment of cardiopulmonary resuscitation instructors or other trainers.

The Requirement for Certification of Public School Athletic Coaches in Cardiopulmonary Resuscitation, 22-1-125.5(2), C.R.S., requires that the State Board shall promulgate rules concerning the coaching staff positions that are included in this requirement.

## **2.00 Definitions.**

- 2.00 (1) Department: The Department of Education created and existing pursuant to section 24-1-115, C.R.S.
- 2.00 (2) Local Education Provider: A school district, a charter school authorized by a school district pursuant to part 1 of article 30.5 of this title, a charter school authorized by the state charter school institute pursuant to part 5 of article 30.5 of this title, or a board of cooperative services created and operating pursuant to article 5 of this title that operates one or more public schools.
- 2.00 (3) Psychomotor Skills Development: The use of hands-on practice that supports cognitive learning.
- 2.00 (4) State Board: The State Board of Education created and existing pursuant to Section 1 of Article IX of the State Constitution.
- 2.00 (5) Currently Certified in CPR: The person has completed training in cardiopulmonary resuscitation from a nationally recognized evidence- based certification program within the preceding two years
- 2.00 (6) Coach: Head and assistant coaches of all athletic programs recognized by the Colorado High School Activities Association (CHSAA)
- 2.00 (7) Qualified Cardiopulmonary Instructors: Instructors that have successfully completed a nationally recognized instruction and have maintained current certification to teach cardiopulmonary resuscitation.

## **2.01 Grant awards for the Instruction of Cardiopulmonary Resuscitation to Students and Coaches.**

Local education providers may apply for a grant or grants to provide instruction to students in any of grades nine through twelve and school staff in any of grades nine through twelve in cardiopulmonary resuscitation and the use of an automated external defibrillator. The instruction funded pursuant to section 22-1-129, C.R.S., must include a nationally recognized, psychomotor-skills-based instructional program that reflects current, national, evidence-based, emergency cardiovascular care guidelines for cardiopulmonary resuscitation and the use of an automated external defibrillator.

- 2.01 (1) Application Timeline. Subject to available appropriations, applications will be due to the Department on or after September 1 in each year that funding is available.

2.01 (2) **Application Procedures.** The Department will be the responsible for implementing the Instruction of Cardiopulmonary Resuscitation to Students and Coaches Grant Program. The Department will develop a Request for Proposal (RFP), pursuant to the Department's RFP process and pursuant to the requirements and timelines found in 22-1-129, C.R.S.

2.01 (3) **Number and Amount of Grants.** No more than 200 grants will be awarded and distribution of funds will be subject to available appropriations.

2.01 (4) **Geographic Distribution.** The Department will award grants through a balanced distribution of grant moneys to applicants including rural, urban and suburban local education providers.

2.01 (5) **Reporting.** In any fiscal year in which the general assembly makes an appropriation to the department for the purposes of the program, each education provider that receives a grant through the program will report to the Department of Education at the end of the school year. This report will include:

2.01 (5) (a) The program used for instruction;

2.01 (5) (b) The number of classes taught;

2.01 (5) (c) The number of students completing the instruction;

2.01 (5) (d) The number of coaches certified in CPR; and

2.01 (5) (e) An accounting of the funds used to provide these trainings.

2.02 **Requirement for certification of public school athletic coaches in cardiopulmonary resuscitation and use of automated external defibrillators.** By January 1, 2015, all coaches currently employed by local education providers must have current certification in CPR. The program must also include training regarding the use of automated external defibrillators.

By majority vote at the August 13, 2014 State Board of Education Meeting, the Board adopted these rules pursuant to C.R.S. 24-4-103(6), C.R.S., finding that immediate adoption of the Rules for the Administration of the Instruction in CardioPulmonary Resuscitation in Public Schools Grant Program (1 CCR 301-95) is imperatively necessary in order to comply with HB 14-1276 which requires the Colorado Department of Education to administer a grant program whereby public high schools have access to grant moneys to be used in the training in CPR and the use of an Automated External Defibrillator.

**John W. Suthers**

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**State of Colorado  
Department of Law**

**Office of the Attorney General**

Tracking number: 2014-00804

**Opinion of the Attorney General rendered in connection with the rules adopted by the  
Colorado State Board of Education**

**on 08/13/2014**

**1 CCR 301-96**

**RULES FOR THE ADMINISTRATION OF THE INSTRUCTION OF CARDIOPULMONARY  
RESUSCITATION IN PUBLIC SCHOOLS GRANT PROGRAM**

The above-referenced rules were submitted to this office on 08/20/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

August 27, 2014 16:35:59

A handwritten signature in black ink, appearing to read "JWS", is shown within a rectangular box.

**John W. Suthers**

Attorney General

by Daniel D. Domenico

Solicitor General

## **Emergency Rules Adopted**

**Department**

Department of Education

**Agency**

Colorado State Board of Education

**CCR number**

1 CCR 301-97

**Rule title**

1 CCR 301-97 Rules for the Administration of the School Health Professional Grant  
Program 1 - eff 08/13/2014

**Effective date**

08/13/2014

# **COLORADO STATE BOARD OF EDUCATION**

## **Department of Education**

### **1 COLORADO CODE OF REGULATION 301-94**

#### **EMERGENCY RULES FOR THE ADMINISTRATION OF**

#### **THE SCHOOL HEALTH PROFESSIONAL GRANT PROGRAM**

**Authority:** Article IX, Section 1, Colorado Constitution. 22-2-106(1)(a) and (c); 22-2-107(1)(c); 22-7-409(1.5); 22-96-101 et seq. of the Colorado Revised Statutes (C.R.S.).

#### **1.00 Statement of Basis and Purpose.**

The statutory basis for these emergency rules adopted on August 14, 2014 is found in 22-2-106(1)(a) and (c), State Board Duties; 22-2-107(1)(c), State Board Powers; and 22-96-101 through 22-96-105, the School Health Professional Grant Program, C.R.S.

The School Health Professional Grant Program, 22-96-101 through 22-96-105, C.R.S., requires the State Board of Education to promulgate rules for the implementation of the program, including but not limited to: the timeline for submitting applications to the Department; the form of the grant application and any information in addition to that specified in section 22-96-104 (2), C.R.S. to be included in the application; any criteria for awarding grants in addition to those specified in section 22-96-104 (3), C.R.S.; and any information to be included in the Department's program report in addition to that required in section 22-96-105, C.R.S.

#### **2.00 Definitions.**

- 2.00 (1) Department: The Department of Education created and existing pursuant to section 24-1-115, C.R.S.
- 2.00 (2) Education Provider: A school district, a board of cooperative services, a charter school authorized by a school district pursuant to Part 1 of Article 30.5 of Title 22 C.R.S., or a charter school authorized by the State Charter School Institute pursuant to Part 5 of Article 30.5 of Title 22 C.R.S.

- 2.00 (3) School Health Professional: A state-licensed or state-certified school nurse or other state-licensed or state-certified health professional qualified under state law to provide support services to children and adolescents.
- 2.00 (4) Secondary School: A public school that includes any of grades seven through twelve.
- 2.00 (5) State Board: The State Board of Education created pursuant to Section 1 of Article IX of the State Constitution.

## **2.01 Implementation Procedures.**

- 2.01 (1) **Application Timeline.** During the 2014-15 school year, the Department will conduct an initial grant funding competition for the School Health Professional Grant Program. Applications will be due to the Department on or before October 1, 2014. Beginning on May 1, 2015, and May 1 of each year thereafter, subject to available appropriations, School Health Professional Grant applications will be due for funding available July 1 of the subsequent fiscal year.
- 2.01 (2) **Application Procedures.** The Department will be the responsible agency for implementing the School Health Professional Grant Program. The Department will develop a Request for Proposal (RFP), pursuant to the Department's RFP process and pursuant to the requirements and timelines found in 22-96-104, C.R.S. If the Department determines an application is missing any information required by rule to be included with the application, the Department may contact the education provider to obtain the missing information. Each grant application, at a minimum, shall specify:
  - 2.01 (2) (a) The intended recipient secondary schools, the number of health professionals employed by the education provider in secondary schools prior to receipt of a grant, and the ratio of students to school health providers in the secondary schools operated by or receiving services from the education provider;
  - 2.01 (2) (b) The education provider's plan for use of the grant moneys, including the extent to which the grant moneys will be used to increase the number of school health professionals at recipient secondary schools and to provide substance abuse and behavioral health care services at recipient secondary schools, including screenings, referrals to community organizations, and training for students, families and staff on substance abuse issues;



- 2.01 (2) (c) The education provider's plan for involving leaders at the recipient secondary schools and in the surrounding community and the faculty at recipient secondary schools in increasing the capacity and effectiveness of the substance abuse and behavioral health care services provided to secondary school students enrolled in or receiving educational services from the education provider;
- 2.01 (2) (d) The extent to which the education provider has developed or plans to develop community partnerships to serve substance abuse and behavioral health care needs of all of the secondary students enrolled in or receiving educational services from the education provider;
- 2.01 (2) (e) The extent to which the education provider has seen increased incidence of disciplinary actions for drug use or selling drugs;
- 2.01 (2) (f) The extent to which the education provider has an existing program that can be expanded to increase the availability of school health professionals;
- 2.01 (2) (g) The amount of matching funds that the education provider intends to provide to augment any grant moneys received from the program and the anticipated amount and source of any matching funds;
- 2.01 (2) (h) The education provider's plan for continuing to fund the increase in school health professional services following expiration of the grant; and
- 2.01 (2) (i) An assurance of the education provider's commitment to participate in the Healthy Kids Colorado Survey and School Health Profiles.
- 2.01 (3) **Application Priority Criteria.** In reviewing applications and making recommendations to the State Board, the Department shall prioritize applications based on the following criteria:
  - 2.01 (3) (a) The education provider's need for additional school Health professionals in secondary schools, demonstrated by the local school and community data regarding marijuana and the number of marijuana establishments located within the boundaries of a school district;
  - 2.01 (3) (b) The existence of a successful school health team in the education provider's school or schools;
  - 2.01 (3) (c) The amount of the matching funds that the education provider is able to commit;

- 2.01 (3) (d) The education provider's emphasis and commitment to implement evidence-based and research-based programs and strategies; and
- 2.01 (3) (e) The likelihood that the education provider will continue to fund the increases in the level of school health professional services following expiration of the grant.
- 2.01 (4) **Additional Review Criteria.** The Department and the State Board shall consult with experts in the area of school health professional services when establishing any additional criteria for awarding grants and in reviewing applications and selecting grant recipients.
- 2.01 (5) **Duration and Amount of Grant Awards.** Subject to available appropriations, the State Board shall award grants to applying education providers pursuant to 22-96-104, C.R.S. The State Board shall base the grant awards on the Department's recommendations. Each grant shall have an initial term of one year. In making the award, the State Board shall specify the amount of each grant.
- 2.01 (5) (a) An education provider that receives a grant under the program shall use the moneys to increase the level of funding the education provider allocates to secondary school health professionals to provide substance abuse and behavioral health care to students prior to receiving the grant and not to replace other funding sources allocated to provide school health professionals for students in secondary schools.
- 2.01 (6) **Reporting.** In any fiscal year in which the general assembly makes an appropriation to the department for the purposes of the program, each education provider that receives a grant through the program shall report the following Information to the department each year during the term of the grant:
  - 2.01 (6) (a) The number of school health professionals hired using grant moneys; and
  - 2.01 (6) (b) A list and explanation of the services provided using grant moneys.
- 2.01 (7) **Evaluation of Program.** On or before May 1, 2015, and on or before May 1 in each fiscal year thereafter in which the general assembly makes an appropriation to the Department for the purposes of the program, the Department shall submit to the Education Committees of the Senate and the House of Representatives, or any successor Committees, a report that, at a minimum, summarizes the Information received by the

department pursuant to subsection (1) of this 22-96-105, C.R.S. The Department shall also post the report to its web site.

At its regularly scheduled August 13, 2014 State Board of Education meeting, the State Board determined that immediate adoption of the Rules for the Administration of the of the School Health Grant Program (1 CCR 301-94) is imperatively necessary in order to comply with SB 14-215 which created the School Health Professional Grant Program which requires the Colorado Department of Education to administer a grant program during this school year which increases the level of funding allocated to secondary school health professionals to provide substance abuse and behavioral health care to students in public high schools and have substance abuse or other behavioral needs and to provide training and resources for staff on the implementation of evidence based programming on substance abuse prevention education.

**John W. Suthers**

Attorney General

**Cynthia H. Coffman**

Chief Deputy Attorney General

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**State of Colorado  
Department of Law**

**Office of the Attorney General**

Tracking number: 2014-00806

**Opinion of the Attorney General rendered in connection with the rules adopted by the  
Colorado State Board of Education**

**on 08/13/2014**

1 CCR 301-97

**RULES FOR THE ADMINISTRATION OF THE SCHOOL HEALTH PROFESSIONAL GRANT  
PROGRAM**

The above-referenced rules were submitted to this office on 08/15/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

A handwritten signature in black ink, appearing to read "JWS", is written over a light blue rectangular background.

**John W. Suthers**

Attorney General

by Daniel D. Domenico

Solicitor General

August 27, 2014 16:45:37

## **Emergency Rules Adopted**

### **Department**

Department of Natural Resources

### **Agency**

Colorado Parks and Wildlife (406 Series, Wildlife)

### **CCR number**

2 CCR 406-5

### **Rule title**

2 CCR 406-5 CHAPTER W-5 - MIGRATORY BIRDS 1 - eff 08/08/2014

### **Effective date**

08/08/2014

**EMERGENCY REGULATIONS - CHAPTER W-5 – MIGRATORY BIRDS**

**ARTICLE I – GENERAL PROVISIONS**

**#500 – DEFINITIONS:**

- A. "Migratory birds" means those migratory birds included in the terms and conventions between the United States and any foreign country for the protection of migratory birds.
- B. "Migratory game birds" means sora, Virginia rail, sandhill crane, Wilson's snipe, mourning dove, white-winged dove, band-tailed pigeon, crows, ducks, coots, and geese.
- C. "Waterfowl" means ducks and geese.
- D. "Dark geese" means Canada geese, white-fronted geese, brant, and all other species of geese except light geese.
- E. "Light geese" means snow (including blue) geese, and Ross' geese.
- F. "Manipulation" means the alteration of natural vegetation or agricultural crops by activities that include but are not limited to mowing, shredding, discing, rolling, chopping, trampling, flattening, burning, or herbicide treatments. Manipulation does not include the distributing or scattering of grain, seed, or other feed after removal from or storage on the field where grown.
- G. "Natural vegetation" means any non-agricultural, native, or naturalized plant species that grows at a site in response to planting or from existing seeds or other propagules. Natural vegetation does not include planted millet. However, planted millet that grows on its own in subsequent years after the year of planting is considered natural vegetation.
- H. "Normal agricultural operation" means a normal agricultural planting, harvesting, post-harvest manipulation or agricultural practice that is conducted in accordance with 50 C.F.R. 20.11 (U.S. Fish and Wildlife Service, October 1, 2013).
- I. "Normal agricultural planting, harvesting, or post-harvest manipulation" means a planting or harvesting undertaken for the purpose of producing and gathering a crop, or manipulation after such harvest and removal of grain, that is conducted in accordance with 50 C.F.R. 20.11 (U.S. Fish and Wildlife Service, October 1, 2013).
- J. "Normal soil stabilization practice" means a planting for agricultural soil erosion control or post-mining land reclamation conducted in accordance with 50 C.F.R. 20.11 (U.S. Fish and Wildlife Service, October 1, 2013).
- K. "Non-toxic shot" means any shot type approved for use to take migratory game birds by the US Fish and Wildlife Service in 50 C.F.R. 20.21, October 1, 2013. This federal regulation, but not later amendments to or editions thereof, has been incorporated by reference and can be viewed and copies obtained as set forth in the "Incorporated References" section of Chapter 0 of these regulations.
- L. "Sinkbox" means a raft or any type of low floating device having a depression which affords a hunter a means of concealing himself below the surface of the water.

**#501 – HUNTING HOURS**

- A. One-half (1/2) hour before sunrise to sunset, except as otherwise provided in this chapter.

## **#502 – MANNER OF TAKING**

The following are legal methods of take for game species listed in this chapter. Any method of take not listed herein shall be prohibited, except as otherwise provided by statute or Commission regulation.

### **A. Waterfowl and other migratory game birds:**

1. Shotgun - Any shotgun not larger than 10 gauge, not firing single slugs and incapable of holding more than three (3) shells in the magazine and chamber combined and fired from the shoulder. Shotguns of any description originally capable of holding more than three (3) shells total capacity shall have the magazine so cut off, altered or plugged with a one-piece filler which is incapable of removal without disassembling the gun, so as to reduce the total gun capacity to hold no more than three (3) shells in the magazine and chamber combined.
2. Hand-held bow - With any hand-held bow provided that the arrow or bowstring is not held or drawn mechanically, except no bows may be used on any firing line designated by the Commission.
3. Blinds - In the open or from a blind or other place of concealment on land or water except a sink box. When camouflaged with vegetation from agricultural crops, such camouflaging must not result in the exposing, depositing, distributing or scattering of grain or other feed.
4. Vessels - From or by means of any vessel (excluding a sinkbox) having a motor or sails attached when the motor has been shut off and/or the sails furled, and its progress therefrom has ceased or from a vessel that is drifting or being propelled by hand, or by the aid of a vessel when used solely as a means of picking up dead or injured birds.
5. Hawking or Falconry - By means of hawking or falconry.
6. Decoys, dogs, and calls - By the aid of a dog, artificial decoys, or with the aid and use of birdcalls except recorded or electrically amplified calls or sounds, unless their use has been authorized elsewhere in this chapter.

### **B. Non-toxic shot requirements**

1. Shot size - No person shall possess or use non-toxic shot of size larger than size T while taking or attempting to take ducks, geese, or coots anywhere in Colorado.
2. Statewide, including all counties in Colorado in both the Central and Pacific flyways;
  - a. No person shall use or possess shot (either in shot-shells or as loose shot for muzzle-loading) other than non-toxic shot while taking or attempting to take ducks, geese or coots.
3. Non-toxic shot is required on commercial wildlife parks, during field trials, and during dog training activities when taking captive-reared mallards in Colorado.

### **C. Prohibition of baiting**

1. Migratory game birds and waterfowl may not be taken by the aid of baiting, or on or over any baited area, if the person knows or reasonably should know that the area is a baited area. It is unlawful to place or direct the placement of bait on or adjacent to an area for



the purpose of causing, inducing, or allowing any person to take or attempt to take any migratory game bird by the aid of baiting or on or over the baited area.

2. As used in this sub-paragraph "baiting" means the direct or indirect placing, exposing, depositing, distributing or scattering of salt, grain, or other feed that could serve as a lure or attraction for migratory game birds to, on or over any areas where hunters are attempting to take them. "Baited area" means any area on which salt, grain, or other feed has been placed, exposed, deposited, distributed, or scattered, if that salt, grain, or other feed could serve as a lure or attraction for migratory game birds to, on, or over areas where hunters are attempting to take them. Any such area will remain a baited area for ten days following the complete removal of all such salt, grain, or other feed.
3. Nothing in this regulation shall prohibit the taking of any migratory game bird, including waterfowl, coots, and cranes, on or over the following lands or areas that are not otherwise baited areas:
  - a. Standing crops or flooded standing crops (including aquatics); standing, flooded, or manipulated natural vegetation; flooded harvested croplands; or lands or areas where seeds or grains have been scattered solely as the result of a normal agricultural planting, harvesting, post-harvest manipulation or normal soil stabilization practice; or standing or flooded standing agricultural crops where grain is inadvertently scattered solely as a result of a hunter entering or exiting a hunting area, placing decoys, or retrieving downed birds.
4. Nothing in this regulation shall prohibit the taking of any migratory game bird, except waterfowl, coots, and cranes, on or over the following lands or areas that are not otherwise baited areas:
  - a. Areas where grain or other feed has been distributed or scattered solely as the result of the manipulation of an agricultural crop or other feed on the land where grown, or solely as the result of a normal agricultural operation.

### **#503 – LICENSE AND STAMP REQUIREMENTS**

#### **A. License required**

1. A small game license is required to take all migratory game birds listed in #500(B) for which an open season exists.
2. Each hunter must call 1-866-COLOHIP (1-866-265-6447) or register online ([www.colohip.com](http://www.colohip.com)) prior to their first hunting trip of the season to register their intent to hunt migratory birds, and to obtain permit numbers if hunting band-tailed pigeons or sandhill cranes, and to provide harvest information for the previous season. "Season" means the period September 1 through March 15.

#### **B. Federal Migratory Bird Hunting and Conservation Stamp**

Except as otherwise provided in this chapter, no person who has attained the age of sixteen (16) years shall take any migratory waterfowl (ducks, geese and swans) unless at the time of such taking they have on their person an unexpired Federal Migratory Bird Hunting and Conservation Stamp (commonly called duck stamp), validated by their signature written across the face of the stamp in ink, or an electronic stamp issued through the Total Licensing System that provides a receipt as proof of purchase. This proof of purchase contains a unique code given to the purchaser instantly, and constitutes valid proof of purchase of a Federal Migratory Bird Hunting and Conservation Stamp for a period not to exceed 45 days from the date of purchase.

#### **C. Colorado State Waterfowl Hunting Stamp**

In addition to the Federal Migratory Bird Hunting and Conservation Stamp, no person who has attained the age of sixteen (16) years shall take any migratory waterfowl (ducks and

geese) unless they possess and carry on their person a valid Colorado State Waterfowl Hunting Stamp, validated by their signature written, in ink, across the face of the stamp.

1. A Colorado State Waterfowl Stamp may be obtained for collection or personal purposes, but shall not serve as the required state stamp for waterfowl hunting purposes.

#### D. Walk-In Access

1. Public Access is prohibited from 1 hour after sunset to 1 hour before sunrise, except that when hunting waterfowl public access is prohibited from two (2) hours after sunset to two (2) hours before sunrise.
2. Species of take will be restricted as follows:
  - a. Lands enrolled and posted as Regular, Late Cropland or Extended Season Walk-In Access Properties are open for the take of all small game, furbearers, and migratory game birds, except Gambel's quail, Gunnison's sage grouse and Greater sage grouse.
3. Public access is allowed:
  - a. From September 1 through the end of February annually for lands enrolled and posted as Regular Season Walk-In Access properties;
  - b. From the opening day of pheasant season through the end of February annually for lands enrolled and posted as Late Season Cropland Walk-In Access properties, and;
  - c. From the opening day of pheasant season through the end of March annually for lands enrolled and posted as Extended Walk-In Access properties.
  - d. From the opening day of pheasant season through the end of February annually, for lands enrolled and posted as Novice Hunter Program Walk-In Access properties:
    1. A current year's graduate of the Novice Hunter Program must be present and actively hunting with each group during all hunting activities.
    2. Up to four additional hunters may accompany and hunt with a graduate of the Novice Hunter Program.
4. Access shall be by foot only. Entry by horseback, motorized vehicle, or other means is prohibited.
5. Access is allowed for hunting only; all other activities are prohibited.
6. Access is prohibited as posted when the landowner is actively harvesting crops.

See also: walk-in access program provisions in Chapter 3 of these regulations for small game species.

### **#504 - SPECIAL CLOSURES AND RESTRICTIONS**

#### A. General

The State of Colorado is divided into two migratory waterfowl flyways consisting of the Pacific Flyway which includes all lands west of the Continental Divide, and the Central Flyway which includes all lands east of the Continental Divide.

1. A person may take in any one day, during the open season prescribed, not to exceed the number of migratory game birds and waterfowl permitted in this chapter. When so taken such birds may be possessed in the numbers specified in this chapter, except that no person on the opening day of the season may possess any migratory game birds or waterfowl in excess of the applicable daily limits and no person may possess any freshly killed migratory game birds or waterfowl during the closed season for such birds.
2. Nothing in this chapter shall be deemed to permit the taking of migratory game birds or waterfowl on any Federal reservation or sanctuary, or any area of the United States set aside under any law, proclamation, or executive order for use as a bird, game, or other wildlife reservation, breeding ground, or refuge, or on any area designated as a closed area under the Migratory Bird Treaty Act except as may be permitted by these regulations.

3. No migratory game bird or waterfowl may be taken at any time, or by any means, from, on or across any highway, road, designated trail, or other right-of-way, whether public or private, within the exterior boundaries of any established national wildlife refuge.
4. Open seasons are established only on such migratory game birds and waterfowl as are herein designated. Exceptions to daily bag and possession limits and to the hours of hunting stated in Federal Migratory Bird regulations shall be as prescribed in this chapter.
5. Descriptions of all closures, specific areas, and areas with special restrictions in this chapter begin with the northern boundary and are described in clockwise rotation, with all roads or designations listed connecting to the next in the progression. The following standard abbreviations are used throughout this chapter:  
Colorado State highways: Colo  
County: Co  
County roads: Co Rd  
Interstate highways: I-  
Road: Rd  
U.S. (Federal) highways: US

Note: Migratory bird hunting closures and special provisions and restrictions for Division properties are found in Chapter 9.

B. Possession of Live Birds

Every migratory game bird wounded by hunting and reduced to possession by the hunter shall be immediately killed and become a part of the daily bag limit. No person shall at any time, or by any means, possess or transport live migratory game birds taken under the provisions of this chapter.

C. Possession of Plumage and Skin of Migratory Birds and Waterfowl.

1. No permit is necessary to possess and transport for his own use the plumage and skins of lawfully taken migratory game birds and waterfowl.
2. Personal use of feathers or skins - any person for his own use may possess, transport, ship, import, and export without a permit the feathers and skins of lawfully taken migratory game birds.

D. Commercial Use of Feathers

Any person may possess, purchase, sell, barter, or transport for the making of fishing flies, bed pillows, and mattresses, and for similar commercial uses the feathers of migratory waterfowl (ducks, geese, and swans) killed by hunting pursuant to these regulations, or seized and condemned by Federal or State game authorities except that:

1. No person shall purchase, sell, barter, or offer to purchase, sell, or barter for millinery or ornamental use the feathers of migratory game birds taken under authority of this chapter, and;
2. No person shall purchase, sell, barter, or offer to purchase, sell or barter mounted specimens of migratory game birds taken under authority of this chapter.

E. Most Restrictive Federal or State Law Shall Apply -

Federal and State laws and regulations govern the taking of all migratory birds, in all cases, the most restrictive State or Federal regulation shall apply by species.

F. Processing, Storage and Tagging Required

No person shall put or leave any migratory game birds at any place (other than at his personal abode), or in the custody of another person for picking, cleaning, processing, or storage (including temporary storage), or for the purpose of having taxidermy services performed, unless such birds or package or container of such birds has a tag attached, signed by the hunter, stating the hunter's address, the total number and species of birds, the date such birds were killed, and the hunter's hunting license number.

G. Custody of Birds of Another Person

No person shall receive or have in custody any migratory game birds belonging to another person unless such birds are tagged as required in item F.

H. Migratory Bird Preservation Facilities

No preservation facility shall:

1. Receive, possess or have in custody any migratory game birds belonging to another person for purposes of picking, cleaning, freezing, processing, storage or shipment, unless accurate records are maintained showing (1) the number of each species, (2) the date such birds were received, (3) the date such birds were disposed of, and (4) the name and address of the person to whom such birds were delivered, or
2. Destroy any records required to be maintained under this section for a period of one (1) year following the last entry on the record, or
3. Prevent any person authorized to enforce the provisions of this regulation from entering such facilities at all reasonable hours and inspecting the records and the premises where such operations are being carried on.

I. Closures

1. Waterfowl hunting is prohibited within the area bounded on the north by the Colorado-Wyoming state line; on the east and south by I-76, Colo 71, US 36, and I-70; and on the west by the Continental Divide and the Larimer-Jackson county line and in Bent, Crowley, Kiowa, Mesa, Otero, and Prowers counties.
  - a. Within fifty (50) yards on each side of the center line of any public road.
  - b. Within one-hundred-fifty (150) yards of any dwelling including the air space directly above this closure, without first obtaining permission from the owner, occupant or person in charge of the dwelling.
2. Hunting is prohibited as specified in the areas and on the dates listed below:
  - a. Barr Lake State Park, Adams County
    1. Only waterfowl hunting will be allowed and will be restricted to Saturdays and Wednesdays.
2. All hunting requires a reservation. Reservations may be made in accordance with #901.A of these regulations. Hunters with reservations may only hunt the area specified on the reservation. Hunters must follow check-in and check-out procedures as posted.
3. Hunters must check in and check out at the designated check station.
  4. Waterfowl hunting is restricted to designated blinds and the maximum number of hunters per blind is 3.
  5. Blinds that have not been reserved will be available on a first-come, first-serve basis after 5 a.m. on each hunting day. Reserved blinds unoccupied by 7:00 a.m. will be available on a first-come, first-serve basis.
- b. Colorado River, Grand County - Waterfowl hunting is prohibited from Shadow Mountain Dam downstream to Twin Creek after November 13.
- c. Colorado River, Mesa County - Waterfowl hunting is prohibited on the Colorado River and 200 yards on either side of the river from the Grand Avenue Bridge in Grand Junction to the west end of Horsethief Canyon State Wildlife Area during the following time periods: Wednesday through Friday of each week, except Thanksgiving

Day, Christmas Day and New Year's Day. In addition waterfowl hunting is prohibited on the river and 200 yards on either side of the river from Appleton Drain to Hunter Wash (the west end of the Walker SWA).

- d. Dillon Reservoir, Summit County – Waterfowl hunting is prohibited on Labor Day and the Saturday and Sunday immediately preceding Labor Day.
  - e. Highline Lake State Recreation Area, Mesa County –
    - 1. Waterfowl hunting on Highline Lake is prohibited on Saturdays and Sundays.
    - 2. Waterfowl hunting is limited to designated blinds only, with a maximum of four (4) hunters per blind.
    - 3. Hunting on this property is by reservation only. Reservations may be made in accordance with #901.A of these regulations. Hunters with reservations may only hunt the hunt area specified on the reservation. Hunters must follow check-in and check-out procedures as posted at the property.
    - 4. Hunt areas that have not been reserved will be available on a first-come, first-served basis after 5:00 am on each hunting day. Reserved hunt areas unoccupied by 7:00 am will be available on a first-come, first-served basis. However, any hunt area must be yielded at any time upon request of a hunter holding a valid and active reservation for that area.
  - f. James M. Robb Colorado River State Park, Mesa County
    - 1. All hunters must park in designated parking areas only.
    - 2. Waterfowl hunting is limited to designated blinds only, with a maximum of four (4) hunters per blind.
    - 3. Hunting on this property is by reservation only. Reservations may be made in accordance with #901.A of these regulations. Hunters with reservations may only hunt the hunt area specified on the reservation. Hunters must follow check-in and check-out procedures as posted at the property.
    - 4. Hunt areas that have not been reserved will be available on a first-come, first-served basis after 5:00 am on each hunting day. Reserved hunt areas unoccupied by 7:00 am will be available on a first-come, first-served basis. However, any hunt area must be yielded at any time upon request of a hunter holding a valid and active reservation for that area.
  - g. Mack Mesa Reservoir State Recreation Area, Mesa County - Hunting and trapping are prohibited.
  - h. Pueblo County - No person shall discharge a firearm or release an arrow for the purpose of hunting waterfowl within 150 yards of any dwelling, including the airspace directly above this closure, without first obtaining permission from the owner, occupant, or person in charge of the dwelling.
  - i. Prewitt Reservoir, Logan and Washington counties - Waterfowl hunting is prohibited as posted to provide for waterfowl resting as necessary depending on water levels, weather, and presence of birds.
  - j. Sweitzer Lake, Delta County - Waterfowl hunting is permitted on opening day and thereafter on each Saturday, Sunday, Wednesday and legal holiday.
  - k. Turk's Ponds Area, Baca County - The following regulations will be in effect from the beginning of the first split of the waterfowl season through the last day of the waterfowl season in sections 20, 21, 28, 29, 32 and 33 in Township 29 South, Range 44 West, 6th P.M. as posted.
    - 1. All lands in Turk's Pond State Wildlife Area within one quarter (1/4) mile of the ordinary high water line are closed to hunting.
    - 2. No person shall discharge a firearm or release an arrow from, upon or across an area 50 yards on each side of the center line of any public road.
  - l. Vancil Reservoir, Morgan County - Waterfowl hunting is prohibited as posted to provide for waterfowl resting as necessary depending on water levels, weather and presence of birds.
3. Hunting is prohibited in the areas listed below, as posted by the Division. Maps detailing current posting shall be available at Division of Wildlife offices upon request during the period of posting restrictions, and such restrictions shall be posted at all public access

points and at specific locations where restrictions apply in adequate numbers and appropriate size to insure notice to the public. The Division shall use only the following criteria when posting these areas: to allow a resting area for waterfowl or other wildlife; to assure public safety by prohibiting the discharge of firearms (hunting) in close proximity to buildings, residences, structures, or other areas where people may be injured or property damaged; and/or to maintain compliance with provisions imposed by leases, deeds or other legally binding restrictions.

- a. Crawford State Recreation Area, Delta County
    1. Hunting is prohibited as posted.
  - b. Meredith Reservoir, Crowley County
    1. Hunting is prohibited as posted.
  - c. New Windsor Reservoir, Weld County
    1. Hunting is prohibited as posted.
    2. No person shall hunt waterfowl within 400 yards of any occupied dwelling without first obtaining permission from the owner, occupant, or person in charge or within one-quarter (1/4) of a mile of the center line of the following roads: beginning at the junction of Weld County Road 74 and State Highway 257 north to Weld County Road 78; east to Weld County Road 21; south to Weld County Road 74; then west to the beginning at State Highway 257 and that said closure shall include all of the area within the boundary formed by these roads.
    3. No person shall hunt waterfowl within 150 yards of the centerline of the following roads: State Highway 257 between Weld County Road 78 and Weld County Road 74; Weld County Road 74 between State Highway 257 and Weld County Road 21.
  - d. Trinidad State Recreation Area, Las Animas County
    1. Waterfowl hunting is prohibited as posted.
4. Hunting geese is prohibited as specified in the areas listed below:
- a. Empire Reservoir, Weld and Morgan Counties
    1. Hunting of geese is prohibited below the historical and recorded high water line. Hunting is also prohibited on the north side of the reservoir 20 yards above the high water line from a point beginning at the inlet structure, continuing north and east to the easternmost end of the dike structure.
  - b. Fossil Creek Reservoir, Larimer County
    1. Hunting of geese is prohibited as posted.
  - c. Johnson Pond, Sedgwick County
    1. Hunting of geese prohibited in that portion of Sedgwick County bounded on the north by U.S. Highway 138, on the east by U.S. Highway 385, on the south by U.S. Interstate 76, and on the west by Sedgwick County Road 29.
    2. During the special late light goose season (Eastern Colorado Special Control Period) and any conservation order for light geese, light goose hunting is allowed within the Johnson Pond Special Goose Closure.
  - d. Jumbo Reservoir, Red Lion, Logan and Sedgwick Counties
    1. Hunting of geese is prohibited in those portions of Logan and Sedgwick counties bounded on the north by Logan Co Rd 70 and Sedgwick Co Rd 3; on the east by Sedgwick Co Rd 3; on the south by Logan Co Rd 970 and Sedgwick Co Rd 24.8, and on the west by Logan Co Rd 95, except as otherwise provided for the Red Lion State Wildlife Area in Chapter 9 of these regulations.
  - e. Lower Latham Reservoir, Weld County
    1. Hunting is prohibited as posted.
  - f. Riverside Reservoir, Weld County
    1. Hunting of geese is prohibited as posted.
  - g. Grand Lake and Windy Gap Reservoir, Grand County
    1. Hunting of geese is prohibited on these lakes, and in the area within 100 yards of their high-water lines.

#### J. Restrictions

1. Landowners may use dogs to haze geese off of their property in order to prevent or alleviate damage, except from April 1 through July 31, provided that the dog is controlled such that no geese are injured or killed.

#### **#505 – SORA AND VIRGINIA RAIL**

##### **A. Statewide:**

1. Dates: September 1 - November 9 annually.
2. Daily Bag Limit: Twenty-five (25) soras or Virginia rails singly or in the aggregate.
3. Possession Limit: Three (3) daily bag limits.

#### **#506 – SANDHILL CRANE**

##### **A. All areas east of the Continental Divide except North Park (Jackson County) and the San Luis Valley.**

1. Dates: October 4 - November 30, 2014.
2. Daily Bag Limit: Three (3).
3. Possession Limit: Three (3) daily bag limits.

#### **#507 – WILSON'S SNIPE**

##### **A. Statewide**

1. Dates: September 1 – December 16 annually.
2. Daily Bag Limit: Eight (8).
3. Possession Limit: Three (3) daily bag limits.

#### **#508 – MOURNING DOVE AND WHITE-WINGED DOVE**

##### **A. Statewide.**

1. Dates: September 1 – November 9 annually.
2. Daily Bag Limit:
  - a. Fifteen (15) mourning doves or white-winged doves singly or in the aggregate.
3. Possession Limit:
  - a. Three (3) daily bag limits.
4. Special Conditions and Restrictions
  - a. While in the field or during transport, all dressed (not fully feathered) doves shall be counted against the daily bag or possession limit for mourning and white-winged doves.

#### **#509 – BAND-TAILED PIGEON**

##### **A. Statewide.**

1. Dates: September 1 – 30 annually.
2. Daily Bag Limit: Five (5).
3. Possession Limit: Three (3) daily bag limits.

#### **#510 – CROW**

##### **A. Statewide.**

1. Dates: October 1 – January 31 annually.

2. Daily Bag Limit: Unlimited.
3. Possession Limit: Unlimited.
4. Special Conditions and Restrictions - Recorded or electronically amplified calls may be used during this season.

#### **#511 – DUCK AND COOT**

- A. Central Flyway Northeast Zone – All areas east of Interstate 25 and north of Interstate 70.
  1. Dates:
    - a. First season: October 11 - December 1, 2014.
    - b. Second season: December 13, 2014 - January 25, 2015.
  2. Daily Bag Limit:
    - a. Ducks: Six (6), excluding mergansers. Of the six (6), no more than five (5) mallards, of which no more than two (2) can be female, two (2) pintail, one (1) canvasback, two (2) redheads, three (3) wood ducks, and three (3) scaup.
    - b. Mergansers: Five (5), of which no more than two (2) may be hooded mergansers.
    - c. Coots: Fifteen (15).
  3. Possession limit: Three (3) daily bag limits.
- B. Central Flyway Southeast Zone – All areas east of Interstate 25 and south of Interstate 70, and all of El Paso, Pueblo, Huerfano and Las Animas Counties.
  1. Dates:
    - a. October 22, 2014 - January 25, 2015.
  2. Daily Bag Limit:
    - a. Ducks: Six (6), excluding mergansers. Of the six (6), no more than five (5) mallards, of which no more than two (2) can be female, two (2) pintail, one (1) canvasback, two (2) redheads, three (3) wood ducks, and three (3) scaup.
    - b. Mergansers: Five (5), of which no more than two (2) may be hooded mergansers.
    - c. Coots: Fifteen (15).
  3. Possession limit: Three (3) daily bag limits.
- C. Central Flyway Mountain/Foothills Zone – All areas west of Interstate 25 and east of the Continental Divide, except El Paso, Pueblo, Huerfano and Las Animas Counties.
  1. Dates:
    - a. First season: October 4 - December 1, 2014.
    - b. Second season: December 20, 2014 - January 25, 2015.
  2. Daily Bag Limit:
    - a. Ducks: Six (6), excluding mergansers. Of the six (6), no more than five (5) mallards, of which no more than two (2) can be female, two (2) pintail, one (1) canvasback, two (2) redheads, three (3) wood ducks, and three (3) scaup.
    - b. Mergansers: Five (5), of which no more than two (2) may be hooded mergansers.
    - c. Coots: Fifteen (15).
  3. Possession limit: Three (3) daily bag limits.
- D. Pacific Flyway – All areas west of the Continental Divide.
  1. Dates:
    - a. First season: September 27 - October 15, 2014
    - b. Second season: November 1, 2014 - January 25, 2015.
  2. Daily Bag Limit:
    - a. Ducks and Mergansers: Seven (7) in the aggregate. Of the 7 (seven), no more than two (2) female mallards, two (2) pintails, one (1) canvasback, two (2) redheads, and three (3) scaup. No scaup may be taken after January 6, 2015.
    - b. Coots: Twenty-five (25).



3. Possession limit:
  - a. Three (3) daily bag limits.

## **#512 – GOOSE**

### **A. North Park – Jackson County**

1. Dates:
  - a. Dark goose:
    1. First season: October 4 - October 22, 2014.
    2. Second season: November 22, 2014 - February 15, 2015.
  - b. Light goose: November 1, 2014 - February 15, 2015.
2. Daily Bag Limit:
  - a. Dark goose: Five (5).
  - b. Light goose: Fifty (50).
3. Possession limit:
  - a. Dark goose: Three (3) daily bag limits.
  - b. Light goose: Unlimited.

### **B. South Park and San Luis Valley - All of Alamosa, Chaffee, Conejos, Costilla, Custer, Fremont, Lake, Park, Rio Grande and Teller counties, and those portions of Saguache, Mineral and Hinsdale counties east of the Continental Divide.**

1. Dates:
  - a. Dark goose:
    1. First season: October 4 - October 22, 2014.
    2. Second season: November 22, 2014 - February 15, 2015.
  - b. Light goose: November 1, 2014 - February 15, 2015.
2. Daily Bag Limit:
  - a. Dark goose: Five (5).b. Light goose: Fifty (50).
3. Possession limit:
  - a. Dark goose: Three (3) daily bag limits.
  - b. Light goose: Unlimited.

### **C. Northern Front Range - All areas in Boulder, Larimer and Weld Counties from the Continental Divide east along the Wyoming border to Highway 85, south on Highway 85 to the Adams County Line, and all lands in Adams, Arapahoe, Broomfield, Clear Creek, Denver, Douglas, Gilpin, and Jefferson Counties.**

1. Dates:
  - a. Dark goose:
    1. First Season: October 4 - October 22, 2014.
    2. Second Season: November 22, 2014 - February 15, 2015.
  - b. Light goose: November 1, 2014 - February 15, 2015.
2. Daily bag limit:
  - a. Dark goose: Five (5).
  - b. Light goose: Fifty (50).
3. Possession limit:
  - a. Dark goose: Three (3) daily bag limits.
  - b. Light goose: Unlimited.

### **D. Balance of Central Flyway - All areas east of the Continental Divide, except North Park, Northern Front Range, South Park and San Luis Valley.**

1. Dates:
  - a. Dark goose: November 22, 2014 - February 15, 2015.
  - b. Light goose: November 1, 2014 - February 15, 2015.

2. Daily Bag Limit:
    - a. Dark goose: Five (5).
    - b. Light goose Fifty (50).
  3. Possession limit:
    - a. Dark goose: Three (3) daily bag limits.
    - b. Light goose: Unlimited.
- E. Pacific Flyway: All areas west of the Continental Divide.
1. Dates:
    - a. First season: September 27 - October 6, 2014.
    - b. Second season: November 1, 2014 - January 25, 2015.
  2. Daily Bag Limit:
    - a. Dark goose: Four (4).
    - b. Light goose: Ten (10).
  3. Possession Limit: Three (3) daily bag limits.

### **ARTICLE III - SPECIAL SEASONS, AREAS, DATES AND LIMITS**

#### **#513 - YOUTH WATERFOWL HUNTING DAYS**

- A. Central Flyway Northeast Zone – All areas east of Interstate 25 and north of Interstate 70.
1. Dates: October 4 - 5, 2014.
  2. Daily bag limit:
    - a. Ducks: Six (6), excluding mergansers. Of the 6 (six), no more than five (5) mallards, of which no more than two (2) can be female, two (2) pintail, one (1) canvasback, two (2) redheads, three (3) wood ducks, and three (3) scaup.
    - b. Mergansers: Five (5), of which no more than two (2) may be hooded mergansers.
    - c. Coots: Fifteen (15).
    - d. Dark Goose: Five (5).
  3. Possession limit: Three (3) daily bag limits.
- B. Central Flyway Southeast Zone – All areas east of Interstate 25 and south of Interstate 70, and all of El Paso, Pueblo, Huerfano and Las Animas Counties.
1. Dates: October 18 - 19, 2014.
  2. Daily bag limit:
    - a. Ducks: Six (6), excluding mergansers. Of the 6 (six), no more than five (5) mallards, of which no more than two (2) can be female, two (2) pintail, one (1) canvasback, two (2) redheads, three (3) wood ducks, and three (3) scaup.
    - b. Mergansers: Five (5), of which no more than two (2) may be hooded mergansers.
    - c. Coots: Fifteen (15).
    - d. Dark Goose: Five (5).
  3. Possession limit: Three (3) daily bag limits.
- C. Central Flyway Mountain/Foothills Zone – All areas west of Interstate 25 and east of the Continental Divide, except El Paso, Pueblo, Huerfano and Las Animas Counties.
1. Dates: September 27 - 28, 2014.
  2. Daily Bag Limit:
    - a. Ducks: Six (6), excluding mergansers. Of the six (6), no more than five (5) mallards, of which no more than two (2) can be female, two (2) pintail, one (1) canvasback, two (2) redheads, three (3) wood ducks, and three (3) scaup.
    - b. Mergansers: Five (5), of which no more than two (2) may be hooded mergansers.
    - c. Coots: Fifteen (15).
    - d. Dark Goose: Five (5).

3. Possession limit: Three (3) daily bag limits.
- D. Pacific Flyway – All areas west of the Continental Divide.
1. Dates: October 18 - 19, 2014.
  2. Daily bag limit:
    - a. Ducks and Mergansers: Seven (7) in the aggregate. Of the 7 (seven), no more than two (2) female mallards, two (2) pintails, one (1) canvasback, two (2) redheads, and three (3) scaup.
    - b. Coots: Twenty-five (25).
    - c. Dark Goose: Four (4).
    - d. Light Goose: Ten (10).
  3. Possession limit:
    - a. Three (3) daily bag limits.
- E. Youth seasons are restricted to hunting by youth 17 years of age and younger accompanied by a mentor. A mentor must be 18 years of age or older and hold a valid hunter education certificate or be born before January 1, 1949, and must accompany the youth while in the act of hunting. Mentors are not authorized to hunt ducks, geese, mergansers, or coots during this season.

#### **#514 – SEPTEMBER TEAL**

- A. Lake and Chaffee counties and all areas east of I-25.
1. Dates: September 13 - 21, 2014.
  2. Daily bag limit: Six (6).
  3. Possession Limit: Three (3) daily bag limits.

#### **#515 – EARLY CANADA GOOSE**

- A. Pacific Flyway - All areas west of the Continental Divide.
1. Dates: September 1 - 9 annually.
  2. Daily bag limit: Four (4).
  3. Possession limit: Three (3) daily bag limits.

### **ARTICLE IV – CONSERVATION ORDER SEASONS, AREAS, DATES AND LIMITS**

#### **#516 – LIGHT GOOSE**

- A. Central Flyway – All areas east of I-25.
1. Dates:
    - a. February 16 - April 30, 2015.
  2. Daily bag limit: Unlimited.
  3. Possession limit: Unlimited.
  4. Special Conditions and Restrictions
    - a. Recorded or electronically amplified calls may be used to take light geese during the conservation order season.
    - b. Hunting of light geese is allowed from one-half (1/2) hour before sunrise to one-half (1/2) hour after sunset.
    - c. A Federal Migratory Bird Hunting and Conservation Stamp is not required to take light geese during the conservation order season.
    - d. Shotguns capable of holding more than three rounds in the magazine and chamber combined may be used to take light geese during the conservation order season.

- e. All other regulations applicable to hunting migratory waterfowl in Colorado apply to taking light geese during the conservation order season.

## **ARTICLE V - DEPREDAATION ORDERS**

### **#517 – CROWS AND MAGPIES**

- A. Crows and magpies may be taken without Federal or State permit at any time of the year or at any time of the day or night when found committing or about to commit depredation upon ornamental or shade trees, agricultural crops, livestock or wildlife, or when concentrated in such numbers and manner as to constitute a health hazard or other nuisance.

## **ARTICLE VI - FALCONRY**

### **#518 – SPECIAL FALCONRY REGULATIONS**

- A. Falconry is a permitted means of taking migratory game birds during regular or extended seasons.
  - 1. Regular Seasons
    - a. General hunting regulations prescribed in this chapter, including seasons and hunting hours, apply to falconry. General season bag and possession limits do not apply to falconry.
    - b. Daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 9 birds, respectively, singly or in the aggregate. The falconry bag limit is not in addition to gun limits.
  - 2. Extended Seasons
    - a. There are no extended seasons.

**Basis and Purpose:**

These emergency regulations reflect changes made to the federal framework migratory bird regulations in July 2014. They restrict the take of canvasback and adjust the season end date for scaup in compliance with federal regulations.

The Parks and Wildlife Commission FINDS that adoption of this EMERGENCY REGULATION is imperatively necessary to comply with federal law, specifically C.F.R. Title 50, Part 20. Adoption of this emergency regulation will bring the Parks and Wildlife Commission's regulations into compliance with federal regulations with regard to hunting of canvasback in the Central and Pacific Flyway portions of Colorado and scaup in the Central Flyway portion of Colorado. In addition, the Parks and Wildlife Commission FINDS that the immediate adoption of this EMERGENCY REGULATION is necessary to protect the public welfare- that is it allows the maximum opportunity for waterfowl hunting in Colorado allowed by federal regulations- and that compliance with the generally applicable notice and hearing requirements of the Administrative Procedures Act would prevent the Parks and Wildlife Commission from having an effective regulation in place prior to the start of the 2014 waterfowl season.

The Parks and Wildlife Commission has, to the extent it could, given notice of its emergency rule-making and allowed for public participation in the adoption of the emergency regulation.

Notice of the proposed emergency rule-making was posted at the state capitol, at the Division of Parks and Wildlife headquarters, Regional Service Centers, and Area Service Centers (area offices), indicating that the Parks and Wildlife Commission would consider the emergency regulation at its regularly scheduled meeting on August 8, 2014, and an opportunity to comment was provided to members of the public at that time.

**The primary statutory authority for these regulations can be found in § 24-4-103, C.R.S., and the state Wildlife Act, §§ 33-1-101 to 33-6-209, C.R.S., specifically including, but not limited to: §§ 33-1-106, C.R.S.**

**EFFECTIVE DATE - THESE EMERGENCY REGULATIONS SHALL BECOME EFFECTIVE IMMEDIATELY UPON ADOPTION AND SHALL REMAIN IN EFFECT FOR NO MORE THAN 120 DAYS OR UNTIL PERMANENT REGULATIONS TAKE EFFECT, WHICHEVER OCCURS FIRST, OR THE EMERGENCY REGULATIONS ARE OTHERWISE REPEALED, AMENDED, OR SUPERSEDED.**

**APPROVED AND ADOPTED BY THE PARKS AND WILDLIFE COMMISSION OF THE STATE OF COLORADO THIS 8<sup>th</sup> DAY OF AUGUST, 2014.**

**APPROVED:**  
**William Kane**  
**Chairman**

**ATTEST:**  
**Christopher J. Castilian**  
**Secretary**

**John W. Suthers**

Attorney General

**Cynthia H. Coffman**

Chief Deputy Attorney General

**Daniel D. Domenico**

Solicitor General



**Ralph L. Carr**

Colorado Judicial Center

1300 Broadway, 10th floor

Denver, CO 80203

Phone 720-508-6000

**State of Colorado  
Department of Law**

**Office of the Attorney General**

Tracking number: 2014-00820

**Opinion of the Attorney General rendered in connection with the rules adopted by the  
CHAPTER W-5 - MIGRATORY BIRDS**

**on 08/08/2014**

**2 CCR 406-5**

**CHAPTER W-5 - MIGRATORY BIRDS**

The above-referenced rules were submitted to this office on 08/15/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

August 22, 2014 16:28:48

A handwritten signature in black ink, appearing to read "JWS", is shown within a rectangular box.

**John W. Suthers**

Attorney General

by Daniel D. Domenico

Solicitor General

## **Emergency Rules Adopted**

### **Department**

Department of Public Safety

### **Agency**

Division of Fire Prevention and Control

### **CCR number**

8 CCR 1507-30

### **Rule title**

8 CCR 1507-30 FIRE CODE ENFORCEMENT AND CERTIFICATION OF FIRE INSPECTORS FOR PUBLIC SCHOOLS, CHARTER SCHOOLS AND JUNIOR COLLEGES 1 - eff 08/13/2014

### **Effective date**

08/13/2014

# **DEPARTMENT OF PUBLIC SAFETY**

## **Division of Fire Prevention and Control**

**8 CCR 1507- 30**

### **CODE ENFORCEMENT AND CERTIFICATION OF INSPECTORS FOR PUBLIC SCHOOLS, CHARTER SCHOOLS AND JUNIOR COLLEGES**

### **STATEMENT OF BASIS, STATUTORY AUTHORITY, AND PURPOSE**

Pursuant to Section 24-33.5-1203.5, C.R.S., the Director of the Colorado Division of Fire Prevention and Control shall promulgate rules as necessary to carry out the duties of the Division of Fire Prevention and Control. This rule is proposed pursuant to this authority and is intended to be consistent with the requirements of the State Administrative Procedures Act, Section 24-4-101, et seq., C.R.S.

House Bill 09-1151 directed that the responsibility for the oversight of public school construction and maintenance be consolidated into the Department of Public Safety, Division of Fire Prevention and Control. Enforcement responsibility of Building Code requirements was formerly within the Department of Labor, Division of Oil and Public Safety. Enforcement of Fire Code requirements is within the Department of Public Safety, Division of Fire Prevention and Control. Both responsibilities are now within the Division of Fire Prevention and Control.

The purpose of this emergency rule change is to address an identified conflict between security and fire safety concerns of school boards. The revised provisions incorporated herein provide an alternative to prescriptive fire safety requirements in order to allow school personnel to safely respond to lockdown situations. A timeline is provided to allow school boards to budget for and implement methods which will effectively and prescriptively resolve fire safety concerns while fully meeting the security needs of the schools.

These responsibilities are considered as a matter of life safety importance, therefore the absence of implementing rules to carry out the purpose of the statutes would be contrary to the public peace, health and safety of the state. For these purposes it is imperatively necessary that the proposed rules be adopted.

  
\_\_\_\_\_  
Paul L. Cooke, Director  
Division of Fire Prevention and Control

August 13, 2014  
\_\_\_\_\_  
Date of Adoption



# **DEPARTMENT OF PUBLIC SAFETY**

## **Division of Fire Safety**

### **8 CCR 1507- 30**

#### **CODE ENFORCEMENT AND CERTIFICATION OF INSPECTORS FOR PUBLIC SCHOOLS, CHARTER SCHOOLS AND JUNIOR COLLEGES**

##### **ARTICLE 1 – Purpose and Authority to Promulgate Rules**

###### **1.1 Purpose:**

- 1.1.1 These rules establish uniform standards and minimum requirements for the construction, inspection and maintenance of public school buildings and structures.
- 1.1.2 The purpose of these rules is to ensure that public school buildings or structures are constructed and inspected in compliance with Sections 22-32-124, 23-71-122, C.R.S adopted codes and applicable rules.

###### **1.2 Technical Rationale**

- 1.2.1 The technical requirements of these rules are supported primarily by codes developed by the International Code Council, a membership association dedicated to building safety and fire prevention. These rules establish minimum requirements for building systems using prescriptive and performance related provisions, which are widely used to construct residential and commercial buildings, including homes and schools.

###### **1.3 Statutory Authority**

- 1.3.1 Sections 22-32-124, 23-71-122 and 24-33.5-1203, C.R.S. establish the authority and duty of the Division of Fire Safety to conduct or oversee the necessary plan reviews, issue building permits, and cause the necessary inspections to be performed as required by the adopted codes for buildings and structures of public schools, institute charter schools, charter schools and junior colleges.
- 1.3.2 Section 24-33.5-1213.5, C.R.S. establishes the authority and duty of the Division to certify persons to conduct Building Code plan reviews and inspections for buildings and structures of public schools, institute charter schools, charter schools and junior colleges. Such persons are reviewed and certified as part of the Prequalified Building Department process, or through third-party building inspector certification.
- 1.3.3 Section 24-33.5-1211 C.R.S. establishes the authority and duty of the Division of Fire Safety to certify persons to conduct Fire Code plan reviews and inspections for buildings and structures of public schools, institute charter schools, charter schools and junior colleges.
- 1.3.4 Sections 22-32-124 and 23-71-122, C.R.S. establish the authority of the local fire department or the Division of Fire Safety to inspect buildings and structures of a Board when deemed necessary to assure that they are maintained in accordance with the adopted Codes.
- 1.3.5 The Director of the Division of Fire Safety is authorized by the provisions of section 24-33.5-1203.5, C.R.S., to promulgate rules in order to carry out the duties of the Division of

Fire Safety. This rule is adopted pursuant to the authority in section 24-33.5-1203.5, C.R.S. and is intended to be consistent with the requirements of the State Administrative Procedures Act, section 24-4-101, et seq. (the "APA" ), C.R.S.

- 1.3.6 The Director of the Division of Fire Safety is authorized to establish fees and charges necessary to defray the anticipated costs of the program.

## **ARTICLE 2 – Definitions**

- 2.1 The definitions provided in 24 33.5 1202, C.R.S., shall apply to these rules. The following additional definitions shall also apply:

**ANNUAL PERMIT** – An official document issued by the Division, or a Prequalified Building Department, in accordance with the International Building Code and Article 6.9 of this Rule.

**BOARD** – The school district Board of education, charter school, institute charter school, junior college, or their designated representative, subject to these rules.

**BUILDING DEPARTMENT** - The appropriate Building Department of an authority, county, town, city, or city and county and includes a Building Department within a fire department.

**BUILDING PERMIT** - An official document issued by the Division, or a Prequalified Building Department, which authorizes the erection, alteration, demolition and/or moving of buildings and structures.

**CERTIFICATE OF COMPLIANCE** – An official document issued by the Division, or the Prequalified Building Department, stating that materials and products meet specified standards, or that work was performed in compliance with approved construction documents.

**CERTIFICATE OF OCCUPANCY** - An official document issued by the Division, or the Prequalified Building Department, which authorizes a building or structure to be used or occupied.

**CEU** – Means continuing education units. Each 10 hours of related professional development activities equals one CEU.

**COMPANY** – A corporation, partnership, firm or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

**CORE AND SHELL PERMIT** - An official document issued by the Division, or the Prequalified Building Department, which is limited to authorizing the construction of foundation, columns, floor slabs, roof structure, exterior walls, and exterior glazing to the point of the building being weather tight.

**CONSTRUCTION** - Work that is not considered as maintenance or service, and that requires a building permit or Annual Permit.

**C.R.S.** – Means Colorado Revised Statutes

**DEMOLITION PERMIT** - An official document issued by the Division, or the Prequalified Building Department, which is limited to authorizing the demolition of all or part of a building or structure.

**DIRECTOR** – The Director of the Division of Fire Safety.

**DIVISION** – Means the Division of Fire Safety

**DIVISION OF FIRE SAFETY** – Means the Division of Fire Safety in the Office of Preparedness, Security, and Fire Safety in the Department of Public Safety.

**FIRE CODE OFFICIAL** – The designated authority charged with the administration and enforcement of the Fire Code. Refer to Article 5 for information pertaining to the definition of the Fire Code Official.

**FOUNDATION** - Work related to building footings, piers, foundation walls, slabs on grade, under slab and underground building services.

**FOUNDATION PERMIT** - An official document issued by the Division, or the Prequalified Building Department, which is limited to authorizing the construction of foundations.

**ICC** – Means the International Code Council and its legacy codes.

**INDIVIDUAL (or PERSON)** – Means a person, including an owner, manager, officer, employee, or individual.

**INSPECTION, TESTING AND MAINTENANCE PROGRAM** – A program conducted by the building owner to satisfy the periodic inspection, testing and maintenance requirements of fire protection and life safety systems as required by applicable codes and standards.

**INSTALLATION** – The initial placement of equipment or the extension, modification or alteration of equipment after the initial placement.

**LOCAL AUTHORITY HAVING JURISDICTION (AHJ)** – The Building Department, Fire Chief, Fire Marshal or other designated official of a county, municipality, special authority, or special district that has fire protection and life safety systems enforcement responsibilities and employs or otherwise provides a Certified Inspector.

**MAINTENANCE** – To sustain in a condition of repair that will allow performance as originally designed or intended.

**MAINTENANCE INSPECTIONS** – Refers to periodic inspections conducted by the local fire department or the Division to verify conformance with the adopted Fire Code, rules and standards. Such maintenance inspections shall not be considered to relieve the building owner of the responsibility to conduct an inspection, testing and maintenance program for fire protection and life safety systems as required by the adopted Fire Code and Standards.

**MECHANICAL PERMIT** – An official document issued by the Division, or Prequalified Building Department, which is limited to authorizing an owner, authorized agent or contractor who desires to erect, install, enlarge, alter, remove, convert or replace a mechanical system, in accordance with the adopted mechanical code.

**MOU** – Means memorandum of understanding.

**NICET** – Means the National Institute for Certification in Engineering Technologies.

**NFPA** – Means the National Fire Protection Association.

**PREQUALIFIED BUILDING DEPARTMENT** – Means a Building Department that employs certified plans examiners and inspections, that has been approved by the Division and has executed a Memorandum of Understanding with the Division in accordance with Article 4 of this rule.

**QUALIFIED FIRE DEPARTMENT** - A fire department providing fire protection service for the buildings and structures of the Board that has Certified Fire Inspectors, as defined by C.R.S. 24-33.5-1202(2.5), at the appropriate level for the task being performed.

**QUALIFIED TRADESPERSON** - Means an employee of the Board who has satisfactorily demonstrated to the Division that they either hold a current building inspector certification from ICC or other similar national organization, or have at least five years of demonstrated education, training, and experience in commercial building construction or inspection.

**SERVICE (or REPAIR)** – Means to repair in order to return the system to operation as originally designed or intended.

**SMALL PROJECT PERMIT:** An official document issued by the Division, or a Prequalified Building Department, in accordance with Article 6.8 of this Rule.

**TEMPORARY CERTIFICATE OF OCCUPANCY** - An official document issued by the Division, or the Prequalified Building Department, which authorizes a building or structure to be temporarily used or occupied for a period not to exceed 90 days, unless an extension has been granted by the Division, or the Prequalified Building Department.

**TEMPORARY CONSTRUCTION TRAILER/OFFICE** – A temporary modular building, owned and operated by the contractor that is less than 1,000 square feet and only placed for the duration of the project. Trailers meeting this definition are exempt from this rule. Trailers not meeting this definition shall be considered as a modular building and permitted as such.

**THIRD PARTY INSPECTOR** – Building inspectors that have been certified by the Division to perform third party inspection services in accordance with Article 10.1 of this rule.

### **ARTICLE 3 – Codes, Documents and Standards incorporated by reference**

3.1 The following codes are adopted and promulgated as minimum standards for the construction and maintenance of all property, buildings and structures of a Board in the State of Colorado.

3.1.1 International Building Code - 2006 Edition, Third Printing: March 2007 (Copyright 2006 by International Code Council, Inc. Washington, D.C.).

As amended by the following:

**1008.1.10 Classroom Hardware.** In classrooms within group E occupancies, hardware shall include a means to manually lock egress doors from inside the classroom . Such means shall not prevent these doors from being operable from the inside without key, special knowledge, or effort.

3.1.2 International Fire Code - 2006 Edition, Third Printing: April 2007 (Copyright 2006 by International Code Council, Inc. - Washington, D.C.), including Appendices B and C.

As amended by the following:

**703.2. Opening protectives.** Opening protectives shall be maintained in an operative condition in accordance with NFPA 80. Fire doors and smoke barrier doors shall not be blocked or obstructed or otherwise made inoperable. Fusible links shall be replaced promptly whenever fused or damaged. Fire door assemblies shall not be modified.

**Exceptions:**

1. Egress door assemblies within classrooms of group E buildings which are fully sprinklered in accordance with 903.3.1.1 and which are required to be locked during security lockdown situations may be provided with an approved manual means to prevent automatic latching.
  2. Egress door assemblies within classrooms of group E buildings complying with 1017.1, exception 1 and which are required to be locked during security lockdown situations may be provided with an approved manual means to prevent automatic latching.
  3. Egress door assemblies within classrooms of group E occupancies not complying with exceptions 1 or 2 which are required to be locked during security lockdown situations may be provided with an approved manual means to prevent automatic latching provided that all of the following are met:
    - 3.1. Egress doors shall remain operable from the inside without key, special knowledge, or effort
    - 3.2. The device used to prevent latching can be quickly disabled or removed in the event of an evacuation.
    - 3.3. No more than one such device may be used on any egress door.
    - 3.4. Devices shall be disabled or removed at all times that the classroom is unoccupied.
    - 3.5. Faculty working within the room shall disable or remove the device used to prevent latching in event of an evacuation, whether for a drill or an actual emergency.
    - 3.6. Subsequent to all evacuations, the Principal or designee shall verify the status of devices and initiate corrective action in cases where responsible staff fail to disable or remove them.
    - 3.7. The School Board shall adopt a policy for the use of such devices. The policy shall address training, devices to be approved, and disciplinary procedures for faculty who fail to comply with these requirements
    - 3.8. Egress door hardware shall be replaced with hardware complying with IBC Section 1008.1.10 by no later than January 1, 2018.
    - 3.9. This exception may be rescinded by the *Fire Code Official* upon evidence of noncompliance with these provisions.
- 3.1.3 International Mechanical Code - 2006 Edition, Second Printing: December 2007 (Copyright 2006 by International Code Council, Inc. - Washington, D.C.).
  - 3.1.4 International Energy Conservation Code - 2006 Edition, First Printing: January 2007 (Copyright 2006 by International Code Council, Inc. - Washington, D.C.).
  - 3.1.5 International Existing Building Code- 2006 Edition, First Printing: January 2007 (Copyright 2006 by International Code Council, Inc. - Washington, D.C.).

- 3.1.6 International Residential Code – 2006 Edition, Second Printing: November 2006 (Copyright 2006 by International Code Council, Inc. - Washington, D.C.)
- 3.2 The Division shall maintain copies of the complete texts of the adopted codes, which are available for public inspection during regular business hours. Interested parties may inspect the referenced incorporated materials by contacting the Public School Construction Program Administrator at the Division and/or The State Depository Libraries.
- 3.3 In the event that a new edition of the code is adopted, the code current at the time of permit application shall remain in effect throughout the work authorized by the permit.
- 3.4 This rule does not include later amendments or editions of the incorporated material.

#### **ARTICLE 4 – Prequalification of Building Department.**

- 4.1 The Division may prequalify a Building Department to conduct the necessary plan reviews, issue building permits, conduct inspections, issue certificates of occupancy, issue Temporary Certificates of Occupancy, and take enforcement action to ensure that a building or structure has been constructed in conformity with these rules.
- 4.2 In lieu of applying for a building permit through the Division, an affected Board may, at its own discretion, opt to use a Prequalified Building Department that has entered into a MOU with the Division as the delegated authority to conduct building code plan reviews, inspections and issue certificates of occupancy.
- 4.3 Prequalification Process
  - 4.3.1 Application Form: In order to be considered for prequalification, the Building Department shall complete an application form, and include each qualified applicant seeking certification as a plan reviewer or inspector on a public school construction project. Qualified applicants shall have the following minimum qualifications:
    - A) Hold current appropriate plan reviewer and/or building inspector certifications from ICC or other similar national organization, and have demonstrated education, training, and experience, or
    - B) If an applicant is not certified in his or her respective field, the applicant shall have at least five years of demonstrated education, training, and experience in commercial building inspections and receive ICC or other national certification within one year after the date of certification by the Division.
    - C) Plan reviewer and Inspector certifications issued by the Division to applicants holding ICC or national certifications will be valid for three years, whereas certifications issued to applicants on the basis of demonstrated education, training, and experience will be valid for one year, and will require ICC or national certification prior to renewal.
  - 4.3.2 Memorandum of Understanding: After the Division has reviewed the application and determined that the Building Department has plan reviewers and inspectors that have the necessary education, training, and experience; the Division may issue and execute a Memorandum of Understanding (MOU) between the Building Department and the Division. Pursuant to this MOU, the Division may prequalify a Building Department to conduct the necessary plan reviews, issue building permits, conduct inspections, issue Certificates of Occupancy, and issue Temporary Certificates of Occupancy to ensure that a building or structure has been constructed in conformity with the adopted building and

fire codes, and take enforcement action.

- A) Nothing in the MOU shall be construed to allow the Building Department to take enforcement action other than in relation to the building and fire codes adopted by the Division.
- B) Nothing in the MOU shall be construed to allow the Division to delegate to a Prequalified Building Department without the approval of the Board unless such action is taken for violation of third party inspection requirements as described in Article 7.1.2 of this rule. .

#### 4.4 Duties of Prequalified Building Departments

- 4.4.1 The Prequalified Building Department shall conduct the necessary plan reviews, issue building permits, conduct inspections, issue certificates of occupancy, issue Temporary Certificates of Occupancy, and take enforcement action to ensure that a building or structure constructed in conformity with the building and fire codes adopted by the Division.
- 4.4.2 The Prequalified Building Department shall not take enforcement action other than in relation to the building and fire codes adopted by the Division.
- 4.4.3 The Prequalified Building Department shall only use plan reviewers and inspectors within their Building Department that have been certified by the Division to work on public school construction projects.
- 4.4.4 The Prequalified Building Department shall cause copies of the building plans to be sent to the local fire department and the Division for review of fire safety issues.
- 4.4.5 If the building or structure is in conformity with the adopted building and fire codes, and if the Qualified Fire Department or the Division certifies that the building or structure is in compliance with the adopted fire code, the Prequalified Building Department shall issue the necessary Certificate of Occupancy prior to use of the building or structure by the permit applicant.
- 4.4.6 If all inspections are not completed and the Board requires immediate occupancy, and if the Board has passed the appropriate inspections, including fire inspections, that indicate there are no life safety issues, the Prequalified Building Department may issue a Temporary Certificate of Occupancy to allow the Board to occupy the buildings and structures.
- 4.4.7 The Prequalified Building Department shall attest that inspections are complete and all violations are corrected before the Board is issued a Certificate of Occupancy. Inspection records shall be retained by the Prequalified Building Department for two years after the Certificate of Occupancy is issued.
- 4.4.8 The Prequalified Building Department may set reasonable fees and collect these fees to offset the cost of plan review and inspection of public school construction projects. Public School Boards shall be notified of any adjustment of fees a minimum of thirty (30) days prior to the effective date of the change

### **ARTICLE 5 – Definition of Fire Code Official and Delegation of Fire Code Authority.**

- 5.1 The Fire Code Official for buildings and structures of public schools, institute charter schools,

charter schools and junior colleges shall be the Division.

- 5.2 Where the local authority having jurisdiction has Certified Fire Inspectors at the appropriate level for the task, the responsibility of conducting the necessary construction plan reviews and inspections required by the adopted Fire Code will be delegated to the Local Authority having Jurisdiction in the location of the structure. Upon delegation of this responsibility, the local authority having jurisdiction shall be considered as the Fire Code Official.
- 5.3 If the Local Authority having jurisdiction declines to perform the plan review or any subsequent inspection, or if a Certified Fire Inspector is not available, the Division shall perform the construction plan reviews and inspections required by the adopted Fire Code and shall be considered as the Fire Code Official.

## **ARTICLE 6 – Building Permit Application**

### **6.1 Notification of Delegation to a Prequalified Building Department.**

6.1.1 For projects that require a permit that will be reviewed and inspected by a Prequalified Building Department, the Board must notify the Division prior to beginning construction. Notification should include:

- A) Name of project (including school district);
- B) Location of project;
- C) Scope of work;
- D) Projected cost;
- E) Planned construction start and end dates;
- F) Identification of Fire Code Official (Qualified Fire Department or Division);
- G) Identification of building code official (Prequalified Building Department).

### **6.2 Preliminary Application Package Review**

6.2.1 For any construction project, the Board or the Division may request and hold, a preliminary review meeting with either the Division or the Prequalified Building Department, and the local fire department, at the appropriate design stage of document preparation.

6.2.2 If a preliminary review meeting is requested, the following items should be included in the preliminary review package:

- A) A key plan or site plan as applicable, showing the property address(s) (or legal description), boundaries, existing buildings, proposed buildings and/or additions, parking lots, fenced areas, fire hydrants, fire equipment access, water supply and topography.
- B) Sufficient documentation to illustrate and describe the design of the project, establishing the scope, relationships, forms, size and appearance of the project by means of plans, sections and elevations, typical construction details, and equipment layouts. The documents shall include outline specifications that identify major materials and systems and establish in general their quality levels.



- C) A code plan that includes the following minimum information:
  - (1) Calculation of the allowable and actual square footage of the new construction;
  - (2) The floor plan of all new construction, existing to remain, and remodel areas;
  - (3) The proposed occupancy group(s) of the building. Include daytime use and after-hours use occupancy groups where applicable;
  - (4) All fire and smoke rated construction (including rated exit corridors, fire walls, fire barriers, fire partitions, smoke barriers), and construction capable of resisting the passage of smoke; and
  - (5) All exits and all stairways.

6.2.3 The Division, the local fire department, and/or the Board may request a meeting or teleconference, in a timely manner, at any time during the preliminary review. All parties shall make reasonable accommodations for such requested meeting or teleconference.

### 6.3 Building Permit Application Submittal

6.3.1 For all construction projects not covered under an annual building permit, a small project permit or a fire protection permit as defined this Article, the Board must submit a complete plan review application package to the Division or the Prequalified Building Department, and the local fire department, not less than 30 days prior to beginning construction. The Board may request from the Division, or the Prequalified Building Department, an exemption to the 30-day minimum submittal period, which will be considered on a case-by-case basis.

6.3.2 The plan review application package must contain the following items listed below, except for small construction projects as defined in Article 6.8:

- A) A fully completed plan review application, signed by the applicant, on the form provided by the Division (available on the Division website);  
<http://dfs.state.co.us>.
- B) A site plan or key plan as applicable;
- C) A code plan and analysis as required by the IBC;
- D) Two full sets of construction drawings (both full size or one full and one half size), signed and wet stamped by the design professional in responsible charge, and by all design professionals in each of the design disciplines represented in the project;
- E) Two full sets of construction specifications (full size), signed and wet stamped by the design professional in responsible charge, and by all design professionals in each of the design disciplines represented in the project;
- F) Soils report (when required by the IBC);
- G) A statement of special inspections, as required by the IBC;

- H) Documentation of design compliance with the International Energy Conservation Code;
- I) Structural calculations (when applicable);
- J) One full set of construction documents in \*.dwf, \*.dxf, \*.pdf, or other approved electronic format on compact disk or other approved electronic storage device.

6.3.3 The building permit application package shall be concurrently submitted to the Division and to the local fire department. Either the Qualified Fire Department or the Division will review the submittal. Permit issuance is contingent upon the review and approval of the submittal by the Fire Code Official. The Board is required to contact the local fire department to determine the submittal items other than those listed in this rule.

#### 6.4 Plan Review and Permitting

6.4.1 The Division will notify the Board upon receipt of a complete building permit application submittal or if the building permit application is incomplete.

6.4.2 The Building Code plan review shall be completed by a certified building plans examiner within the Division, or by the Prequalified Building Department.

6.4.3 The Fire Code plan review shall be completed by an individual certified as a Fire Inspector III – Plans Examiner within the Division, or by the Qualified Fire Department.

6.4.4 For delegated fire code review and inspection arrangements, the Fire Code Official has 20 business days, upon receipt of a complete review package, to submit the completed fire review to the Division or the Prequalified Building Department. The Fire Code Official shall forward their approval, or list of comments and corrections to for inclusion in the consolidated report of both building and fire code reviews.

6.4.5 The Fire Code Official may request, in writing, an extension from the Division on the basis of the complexity of the building plans. Extension requests shall be copied to the affected Board.

6.4.6 The Division, the local fire department and/or the Board may request a meeting or teleconference at any time during the construction document review. The Division shall make reasonable accommodations for such meeting or teleconference.

6.4.7 Upon completion of the review, and after receipt of the fire review from the Fire Code Official, the Division or the Prequalified Building Department will provide to the Board a comprehensive list of corrections from both building and fire code reviews to be addressed prior to the issuance of a Building Permit. This list of corrections shall not be considered as all-inclusive, and may not be considered as approval of any condition in violation of applicable code. Once all corrections have been satisfactorily addressed, the Division or the Prequalified Building Department shall issue the Building Permit.

#### 6.5 Phased Permitting

6.5.1 Upon request by the Board, the Division may issue phased permits for demolition, construction of foundations, and construction of core and shell, provided that construction documents for that portion of the building or structure being permitted have been submitted per Article 6-3. The holder of such permit for demolition, or the construction of foundations or vertical construction shall proceed at the holder's own risk with building operation and without assurance that a permit for the entire structure will be granted.

Issuance of this permit shall not be considered all inclusive and may not be considered as approval of any condition in violation of applicable codes.

6.6 Deferred Design/Build Submittals / Shop Drawings

- 6.6.1 Deferred design/build (shop drawing) submittals for fire protection and life systems are permitted, however construction documents shall provide sufficient information to show compliance with Fire Code requirements and coordination between fire systems and other building systems (i.e., HVAC systems, security systems).
- 6.6.2 Shop (Installation) drawings for fire protection and life safety systems shall be submitted to the Fire Code Official for review and approval prior to beginning installation of the system.
  - A) Fire sprinkler shop drawing shall be submitted to the Fire Code Official in accordance with C.C.R. 1507-11 - Colorado Fire Suppression Program and the requirements of the Fire Code and NFPA 13 – *Installation of Sprinkler Systems* .
    - (1). Provide a minimum of three (3) complete copies of the submittal.
    - (2). Submittal packages shall contain the minimum information required by the adopted Fire Code and NFPA 13.
  - B) Fire alarm shop drawings shall be submitted to the Fire Code Official in accordance with the requirements of the Fire Code and NFPA 72 – *National Fire Alarm Code* .
    - (1). Provide a minimum of three (3) complete copies of the submittal.
    - (2). Submittal packages shall contain the minimum information required by the adopted Fire Code and NFPA 72.
  - C) Shop (installation) drawings for other systems regulated by the Fire Code shall be submitted to the Fire Code Official in accordance with the Fire Code, and the appropriate reference standard for the system as indicated in the Fire Code.
- 6.6.3 Minimum qualifications for fire protection and life safety system design and installation.
  - A) Fire Suppression Systems
    - (1). Any installation, modification, alteration, or repair of a fire suppression system shall be in accordance with C.C.R. 1507-11 - Colorado Fire Suppression program.
  - B) Fire Alarm Systems
    - (1). The design of any new system or alteration of an existing fire alarm system using the prescriptive requirements of NFPA 72 shall be performed by a person that is currently a professional engineer or certified by NICET at a level III or level IV in fire protection engineering technologies - fire alarm systems, or another nationally recognized organization approved by the Division.
    - (2). The design of any new system or alteration of an existing fire alarm system using performance based design methods as described by NFPA

72 or alternative materials and methods as described by the adopted Fire Code shall be performed by a person that is currently a professional engineer.

- (3). The installation of a fire alarm system shall be performed by or supervised by a person that is currently certified at a minimum of NICET level II in fire protection engineering technologies – fire alarm systems, or another nationally recognized organization approved by the Division.

C) Other Fire Protection Systems regulated by the Fire Code.

- (1) The design and installation shall be performed by a company or individual with manufacturer or factory approved training for the specific system, or as otherwise required by the applicable Code section or referenced standard.

6.7 Fire Protection Permits

6.7.1 Fire protection projects, involving only the installation, modification, repair or replacement of fire protection and life safety systems, or other activities regulated solely by the Fire Code are exempt from the requirements of Article 6.3, however a fire protection permit shall be obtained from the Fire Code Official in accordance with this Article and the IFC.

6.7.2 Submit system shop or installation drawings in accordance with the requirements of Article 6.6.

6.8 Small Project Permit

6.8.1 In lieu of a full Building Permit, the Division may issue a small construction project permit for certain small projects. Small project permit application requirements differ from full building permit projects, as defined and documented on Division small project application forms and checklists.

6.8.2 Small Project Scope: Small projects are limited in scope, as defined by the Small Project Permit Policy, issued by the Division.

6.9 Annual Permits

6.9.1 In lieu of an individual permit for each alteration to an already approved mechanical or building installation, the Division or Prequalified Building Departments may issue an Annual Permit, upon application, to any Board regularly employing one or more Qualified Tradespersons in the building, structure or on the premises owned or operated by the Board. Annual Permits shall remain valid for a period of 12 months from the issuance date. The Board shall notify the Local Fire Department prior to the commencement of work conducted under an Annual Permit. A Prequalified Building Department may also require notification prior to commencement of projects conducted under an Annual Permit.

6.9.2 Annual Permit Scope: Annual Permit projects are limited in scope, as defined by the Annual Permit Policy, issued by the Division.

6.9.3 Annual Permit Records: The Board to whom an Annual Permit is issued shall keep a detailed record, including stamped engineered drawings (if applicable), of all replacements made under such Annual Permit.

- 6.9.4 All work completed under an Annual Permit shall be inspected by a Third Party Inspector or a Qualified Tradesperson within 10 days of completion of a project, and such inspections shall be recorded on an inspection log. The Division, or the Prequalified Building Department that chooses to issue Annual Permits, shall have access to all inspection logs at all times and such records shall be submitted to the Division or the Prequalified Building Department within 30 days of the expiration date of Annual Permit.
- 6.9.5 If the inspection logs associated with the Annual Permit demonstrate compliance with the Annual Permit requirements, The Division or the Prequalified Building Department may issue a Certificate of Compliance for projects completed under that permit.
- 6.9.6 If the inspection logs associated with the Annual Permit demonstrate noncompliance with the Annual Permit requirements, the division will issue a correction notice and may withhold issuing another Annual Permit to the Board until all corrections have been satisfied.

## **ARTICLE 7 – Construction Inspections**

### **7.1 Building Code Inspections**

- 7.1.1 Construction or work for which a permit is required shall be subject to inspection by the Division, a Third Party Inspector contracted by the Board, or the Prequalified Building Department. Such construction or work shall remain accessible and exposed for inspection purposes until approved. Neither the Division, a Third Party Inspector contracted by the Board, nor the Prequalified Building Department shall be liable for expense entailed in the removal or replacement of any material required to allow inspection.
- 7.1.2 Third Party Inspections: For all building permit applications issued by the Division, the affected Board shall hire and compensate third-party inspectors certified by the Division to perform inspections. A listing of certified Third Party Inspectors will be posted on the Division website. If the Board is unable to obtain a third-party inspector, a Building Department that has been prequalified by the Division shall oversee the project. If the Board is unable to obtain a third-party inspector and no Building Department has been prequalified, the Division shall conduct or contract with a Third Party Inspector to perform the required inspections and the Board shall compensate the Division or the contracted third-party inspectors for all associated inspection costs.
- A) Prior to commencement of construction on projects requiring third party inspections, the Board shall notify the Division of the designated Third Party Inspector for the permitted project. The notification shall be made in writing using a form provided by the Division. The Division may request a preconstruction meeting with the Board, the contractor hired to perform the work, and the certified Third Party Inspector
- B) The Division shall require a sufficient number of third-party inspection reports to be submitted by the inspector based upon the scope and cost of the project to ensure quality inspections are performed. Concurrent with the permit approval, the Division shall issue an Inspection Card specifying the applicable required inspections as set forth in Chapter 1 of the Building Code.
- (1) The inspection card shall be on site throughout the duration of the project.
- C) Violation of Third-Party Inspection Requirements: If the Division finds that

inspections are not completed satisfactorily, or that all violations are not corrected, the Division shall take enforcement action against the appropriate Board pursuant to Article 11, and may require that the next project undertaken by the Board be delegated to the Prequalified Building Department

- 7.1.3 For permits issued by the Division, the final inspection shall be conducted only by the Division, after all work required by the building permit is completed. Mid-construction inspections may be performed to observe progress and verify compliance with third-party inspection requirements as deemed necessary by the Division.
- 7.1.4 Third Party Inspectors shall include their printed name and state certification number in the appropriate location on the inspection report or card.

## 7.2 Fire Code Inspections

- 7.2.1 Project sites shall be inspected by the Fire Code Official to verify compliance with the Fire Code and approved construction documents. Construction inspections shall be conducted by a person certified as Fire Inspector II or Fire Inspector III – Plans Examiner. Third-party inspection provisions do not apply to the required Fire Code inspections. Fire inspections shall be by the Division, or the Qualified Fire Department.
- 7.2.2 A Certified Fire Suppression System Inspector shall perform inspections of fire suppression systems in accordance with C.C.R. 1507-11 – Colorado Fire Suppression Program.
  - A) If the Certified Fire Inspector II also holds a Fire Suppression System Inspector certification, the inspector may perform both inspections.
  - B) If the Certified Fire Inspector II is not also a Certified Fire Suppression System Inspector, the Fire Code Official shall obtain the services of a Certified Fire Suppression System Inspector to perform the suppression system inspections.

- 7.3 Results of all inspections shall be documented on the job site inspection card and in the official records of the inspecting entity, including type of inspection, date of inspection, identification of the responsible individual making the inspection, and comments regarding approval or disapproval of the inspection. Inspection records shall be retained by the inspecting entity for two years after the Certificate of Occupancy is issued.

- 7.3.1 Certified Fire Inspectors shall include their printed name and state fire inspector certification number in the appropriate locations on the inspection report or card.

## 7.4 Inspection Request Notification to the Division.

- 7.4.1 The Division shall be provided with notification in writing at least 5 days prior to any requested inspection. The Division will make all reasonable efforts to provide the inspection on the requested day or time, provided an inspector is available. If the inspection schedule is full, an alternate day and time will be proposed.
- 7.4.2 It shall be the duty of the permit holder to provide access to and means for inspections of such work that are required by this code.
- 7.4.3 Work shall not be done beyond the point indicated in each successive inspection without first obtaining the approval from the appropriate inspection entity. The inspector, upon notification, shall make the requested inspections and shall either indicate the portion of the construction that is satisfactory as completed, or notify the permit holder or their

agent wherein the same fails to comply with the codes adopted in these rules. Any portions that do not comply shall be corrected and such portion shall not be covered or concealed until authorized by the appropriate inspection entity. The re-inspection shall be requested in accordance with Article 7.4.1.

## **ARTICLE 8 – Certificate of Occupancy**

- 8.1 The Board shall not occupy or use a public school building or structure until a Certificate of Occupancy or a Temporary Certificate of Occupancy has been issued by Division, or the Prequalified Building Department.
- 8.2 The Division, or the Prequalified Building Department, may issue a Temporary Certificate of Occupancy if a Board requires immediate occupancy, and if the Board has passed the appropriate inspections, including fire inspections, that indicate there are no life safety issues. The Temporary Certificate of Occupancy shall expire ninety days after the date of issuance. If no renewal of the Temporary Certificate of Occupancy is issued or a permanent Certificate of Occupancy is not issued, the building shall be vacated upon expiration of the Temporary Certificate of Occupancy.

## **ARTICLE 9 – Maintenance Inspections and Inspection, Testing and Maintenance Programs.**

- 9.1 Maintenance Inspections.
  - 9.1.1 The fire department providing fire protection service or the Division may perform inspections of the buildings and structures when deemed necessary to assure that they are maintained in accordance with the adopted Fire Code.
    - A) If the fire department is unable or unwilling to perform maintenance inspections, the Division shall have the authority and duty to perform them.
    - B) If the local fire department does not have an inspector certified as a Fire Inspector I or above, the Division will perform regular maintenance inspections for the Board to ensure compliance with this rule and the applicable statutes.
  - 9.1.2 Qualified Fire Departments performing maintenance inspections are required to notify the Division that such inspections are being performed and provide documentation when inspections are completed. If notice and/or documentation is not provided, the Division shall assume that the inspections are not being performed and will have the duty to perform them.
  - 9.1.3 Nothing in this Article 9.1 shall prohibit the fire department providing fire protection services from conducting routine assessments of buildings and structures, or prevent the department from correcting violations that pose an immediate threat to life safety. Additionally, nothing in this Article 9.1 shall prohibit the Fire Department from seeking enforcement action in a court of competent jurisdiction.
  - 9.1.4 A fire department providing fire protection service for buildings and structures of a Board that chooses to perform Fire Code inspections may refer notices of deficiencies to the Division for evaluation and enforcement.
    - A) Notices of deficiencies and requests for evaluation and enforcement shall be submitted in writing to the Public School Program Administrator as described in Article 13 of this Rule.

## 9.2 Inspection, Testing and Maintenance Programs.

- 9.2.1 The Board shall ensure that building systems are inspected, tested, and maintained as required by the adopted codes and referenced standards.
- 9.2.2 Personnel employed by a Board performing inspection, testing, and maintenance programs are not required to be Certified Fire Inspectors.
  - A) Exception: Work conducted on system components that would require permits, licensing, or certifications under any adopted codes, laws, or rules.
- 9.2.3 Inspection, Testing, and Maintenance Records shall be retained for at least two years. Records shall indicate the procedure or inspection performed by the organization that performed the procedure or inspection, the results, and the date. The Board shall provide these records for review by the Qualified Fire Department or to the Division upon request.

## **ARTICLE 10 – Building Code and Fire Code Inspector Certification**

### 10.1 Building Code Inspectors

- 10.1.1 Building Inspectors shall be certified as part of the Prequalified Building Department process as described in Article 4 of this rule, or certified as Third-Party Building Inspectors in accordance with this Article 10.1.
- 10.1.2 Third Party Building Inspector Certification
  - A) Applicants seeking such certification shall have the following minimum qualifications:
    - (1) Hold current appropriate building inspector certifications from ICC or other similar national organization, and have demonstrated education, training, and experience, or
    - (2) Have at least five years of demonstrated education, training, and experience in commercial building inspections and receive national certification within one year after the date of certification. Qualified applicants that have at least five years of demonstrated education, training, and experience in appropriate building inspections will be issued certifications for one year. Certification renewal will be contingent on the applicant obtaining commercial building inspector certification from ICC or other similar national organization, prior to the expiration date of the applicant's inspector certification.
- 10.1.3 Duties of Third-Party Inspectors
  - A) Third Party Inspectors, contracted by the Board, shall conduct the required inspections, and require corrections or modifications as necessary to ensure that a building or structure is constructed in conformity with the building code adopted by the Division.
  - B) Third Party Inspectors, contracted by the Board, shall enforce only the codes adopted by the Division
  - C) The Board shall only use inspectors that are certified by the Division to work on Public School Construction projects.



- D) Third Party Inspectors contracted by the Board shall cause copies of their inspection reports to be sent to the Division.
- E) If all inspections are not completed and a building requires immediate occupancy, and if the Board has passed the appropriate inspections that indicate there are no life safety issues, the certified Third Party Inspectors contracted by the Board shall notify the Division of the same so that a Temporary Certificate of Occupancy may be issued to allow the Board to occupy the buildings and structures.
- F) Third Party Inspectors contracted by the Board shall attest that inspections are complete and all violations are corrected before the Division issues the Board a Certificate of Occupancy. The certified Third Party Inspectors shall retain inspection records for two years after the Certificate of Occupancy is issued.

10.1.4 Applicants shall complete the following items for application as a Certified Third Party Inspector:

- A) Complete the application form for third-party inspector certification, which is available from the Division website.
- B) Provide a resume and sufficient proof of qualification including proof of national certifications, or description of equivalent education, training and experience.
- C) Pay the required certification fee.

## 10.2 Fire Inspector Certification

10.2.1 Fire Inspectors performing construction plan review and inspections shall be "Certified Fire Inspectors" as defined in section 24-33.5-1202 (2.5), C.R.S.

10.2.2 There shall be three levels of certification for Fire Inspectors. Inspectors shall be certified to the appropriate level defined in Sections A through C of this Article for the task performed.

- A) FIRE INSPECTOR I - In order to become certified as Fire Inspector I, a person must meet at least one of the following criteria:
  - (1) Satisfactorily complete the Fire Inspector I certification examination, administered by the Division, by correctly answering at least 80 percent of the questions.
  - (2) Possess current and valid inspector certification(s) issued by a nationally recognized organization, which includes knowledge in fire protection and life safety systems, plan review and inspection. The following certifications are approved:
    - (a) ICC Fire Inspector I
    - (b) Company Officer Fire Inspector – Uniform Fire Code
    - (c) NFPA Fire Inspector I
  - (3) Submit documentation to the Division to demonstrate that they have the requisite skills and knowledge specified in NFPA 1031 – *Standard for Professional Qualifications for Fire Inspector and Plans Examiner* for

Fire Inspector I, including education, training and experience. The following list identifies examples of education, training and experience that may be considered as equivalent to the requisite skills and knowledge for Fire Inspector I. This list shall not be considered as all-inclusive.

- (a) A combination of three (3) years of education and work experience in fire protection and/or code enforcement is required. Education shall be an Associate Degree or above in Fire Science, Fire Prevention, Fire Protection Engineering or other approved related major. Work experience shall be specifically in fire prevention, fire protection, code enforcement or inspection.
- (b) Evidence of completion of courses that directly relate to fire protection inspections delivered by a recognized organization or institution.
- (c) Current Colorado license as a registered professional engineer specializing in fire protection.
- (d) Submit evidence of current and valid certification in another state, which is determined by the Division to be at least equivalent to the requirements listed herein.

B) FIRE INSPECTOR II - In order to become certified as Fire Inspector II, a person must meet at least one of the following criteria:

- (1) Satisfactorily complete the Fire Inspector II certification examination, administered by the Division, by correctly answering at least 80 percent of the questions.
- (2) Possess current and valid inspector certification(s) issued by a nationally recognized organization, which includes knowledge in fire protection and life safety systems, plan review and inspection. The following certifications are approved:
  - (a) ICC Fire Inspector II
  - (b) Uniform Fire Code Inspector
  - (c) NFPA Fire Inspector II
- (3) Submit documentation to the Division to demonstrate that they have the requisite skills and knowledge specified in NFPA 1031 – *Standard for Professional Qualifications for Fire Inspector and Plans Examiner* for Fire Inspector II including education, training and experience. The following list identifies examples of education, training and experience that may be considered as equivalent to the requisite skills and knowledge for Fire Inspector II. This list shall not be considered as all inclusive.
  - (a) A combination of four (4) years of education and work experience in fire protection and/or code enforcement is required. Education shall be an Associate Degree or above in

Fire Science, Fire Prevention, Fire Protection Engineering or other approved related major. Work experience shall be specifically in fire prevention, fire protection, code enforcement or inspection.

- (b) Evidence of completion of courses that directly relate to fire protection inspections delivered by a recognized organization or institution.
- (c) Current Colorado license as a registered professional engineer specializing in fire protection.
- (d) Submit evidence of current and valid certification in another state, which is determined by the Division to be at least equivalent to the requirements listed herein.

C) FIRE INSPECTOR III – PLANS EXAMINER - In order to become certified as Fire Inspector III – Plans Examiner, a person must meet at least one of the following criteria:

- (1) Satisfactorily complete the Fire Inspector III - Fire Plans Examiner examination, administered by the Division, by correctly answering at least 80 percent of the questions.
- (2) Possess current and valid inspector certification(s) issued by a nationally recognized organization, which includes knowledge in fire protection and life safety systems, plan review and inspection. The following certifications are approved:
  - (a) ICC Fire Inspector II and ICC Fire Plans Examiner
  - (b) ICC Fire Inspector II and ICC Building Plans Examiner
  - (c) ICC Fire Inspector II and 2 years minimum documented plan review experience.
  - (d) Uniform Fire Inspector and Building Plans Examiner – Uniform Building Code
  - (e) ICC Fire Inspector II and Building Plans Examiner – Uniform Building Code.
  - (f) NFPA Fire Inspector II and NFPA Plans Examiner
- (3) Submit documentation to the Division to demonstrate that they have the requisite skills and knowledge specified in NFPA 1031 – *Standard for Professional Qualifications for Fire Inspector and Plans Examiner* for Fire Inspector II and for Fire Plans Examiner II, including education, training and experience. The following list identifies examples of education, training and experience that may be considered as equivalent to the requisite skills and knowledge for Fire Inspector III. This list shall not be considered as all inclusive.
  - (a) A combination of five (5) years of education and work experience in fire protection and/or code enforcement is required. Education

shall be an Associate Degree or above in Fire Science, Fire Prevention, Fire Protection Engineering or other approved related major. Work experience shall be specifically in fire prevention, fire protection, code enforcement or inspection.

- (b) Evidence of completion of courses that directly relate to fire protection inspections delivered by a recognized organization or institution.
  - (c) Current Colorado license as a registered professional engineer specializing in fire protection.
  - (d) Submit evidence of current and valid certification in another state, which is determined by the Division to be at least equivalent to the requirements listed herein.
- D) Recognized organizations or institutions for equivalent training and education include, but are not limited to:
  - (1) American Fire Sprinkler Association
  - (2) Automatic Fire Alarm Association
  - (3) International Code Council
  - (4) National Fire Academy
  - (5) National Fire Protection Association
  - (6) National Fire Sprinkler Association
  - (7) Oklahoma State University
  - (8) Society of Fire Protection Engineers
  - (9) University of Maryland
  - (10) Worcester Polytechnic Institute

#### 10.2.3 Duties of Certified Fire Inspectors

- A) Fire Inspectors shall conduct the required plan reviews and inspections, and require corrections or modifications as necessary to ensure that a building or structure is constructed in conformity with the fire codes adopted by the Division.
- B) Fire Inspectors shall enforce only the codes adopted by the Division.
- C) Fire Inspectors shall cause copies of their inspection reports to be sent to the Division.
- D) If all inspections are not completed and a building requires immediate occupancy, and if the Board has passed the appropriate inspections that indicate there are no life safety issues, the Fire Inspector may recommend to the Division or the Prequalified Building Department that a Temporary Certificate of Occupancy be issued to allow the Board to occupy the buildings and structures.

- E) Fire Inspectors shall maintain records of all plan reviews and inspections conducted during the three year certification period. Said records shall be made available for review by the Division, upon request.

10.2.4 Applicants shall complete the following items for application as a Certified Fire Inspector:

- A) Complete the application form for inspector certification, which is available from the Division website.
- B) If the applicant does not have equivalent national certifications, and is not taking the state examination, provide a resume and sufficient proof of equivalent qualification including education, training and experience to document that minimum certification requirements are satisfied.
- C) Pay the required certification fee.

10.2.5 Fire Inspector Written Examinations

- A) The written examination shall consist of multiple-choice questions derived from the adopted Codes, NFPA Standards and Rules promulgated by the Division.
- B) Applicants must correctly answer eighty percent (80%) of the questions on the examination to become certified.
- C) Applicants that 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 fee.

10.3 Renewal of Inspector Certifications

10.3.1 Third-Party Inspector and Fire Inspector Certifications are valid for a period of three years from the date of issuance, unless earlier suspended or revoked.

10.3.2 Renewal of Inspector certification is the responsibility of the certified individual. Renewal shall require an application accompanied by the following:

- A) Complete the application form for inspector certification renewal, which is available from the Division.
- B) Certification renewal is contingent on meeting *one* of the following educational requirements during the three-year certification period:
  - (1) Fifteen hours of continuing education relating to the field of building construction or fire protection, as applicable, including, but not limited to, classes, seminars, and training conducted by professional organizations or trade associations; or.
  - (2) Documentation to the Division of 1.5 CEU's relevant to the field of building construction or fire protection as applicable, 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).

Participation as a student in a seminar or technical session related to building construction or fire protection and life safety systems (depending upon the certification) conducted by a qualified organization. Such organizations include, but are not limited to: ICC, NFPA, Society of Fire Protection Engineers, National Fire Sprinkler Association, American Fire Sprinkler Association, Automatic Fire Alarm Association, Oklahoma State University, National Fire Academy, Fire Marshals Association of Colorado training sessions, etc.	0.1 CEU per clock hour of attendance
Attendance at NFPA and/or ICC code development hearings related to fire protection, fire prevention or life safety.	0.1 CEU per clock hour of attendance up to 1.0 CEU per renewal period.
Committee or board service for NFPA and/or ICC for one full year.	0.5 CEU per committee, per year.
Instruction of a seminar or technical session delivered for a related professional association, state or local code enforcement agency, standards writing organization or any related program.	0.1 CEU per clock hour of instruction delivered.
Participation as a student in a university, community college, junior college, technical or vocational school in a course related to, building construction or fire protection, fire prevention or life safety (depending upon the certification).	1.0 CEU per credit hour.
Participation as an instructor in a university, community college, junior college, technical or vocational school in a course related to building construction or fire protection, fire prevention or life safety (depending upon the certification).	1.0 CEU per credit hour.
Documented in-house training or continuous employment as a code official, plans examiner, or inspector. Training shall be documented and approved by the chief executive, fire chief or training officer for the applicant's organization.	Up to 0.3 CEU per renewal period.
Publication of a paper, book or technical article for a related textbook or professional trade journal.	1.0 CEU per publication.

(3) Applicants not meeting the requirements for continuing education specified in (1) or (2) of this Article may retake the certification examination required of new applicants as an alternative for renewal.

(4) Successful renewal of equivalent ICC or other national certifications shall be considered as acceptable criteria for renewal of the State inspector certification. Submit proof of ICC renewal with the renewal application.

C) Payment of the required renewal fee.

10.4 Denial, revocation, suspension, annulment, limitation or modification of certification.

10.4.1 Denial of Certification

- A) The Division, in accordance with the Administrative Procedures Act, Section 24-4-101, et seq., C.R.S., may deny any certificate or refuse to renew a certificate to any applicant for, but not limited to, the following reasons:
- (1). Failure to meet requirements specified in these rules pertaining to the issuance of certificates and/or the renewal of certification.
  - (2). Any conduct as described in Article 10.4.2.B pertaining to good cause for disciplinary action.
  - (3). Fraud, misrepresentation, or deception in applying for or securing certification, or in taking any written certification examination.
  - (4). Aiding and abetting another person in procuring or attempting to procure certification for any person who is not eligible for certification.
  - (5). Creating a disturbance during a state written examination, or conducting themselves in a manner that disrupts other persons taking the examination or prevents the examination proctor from conducting the examination.

10.4.2 Revocation, suspension, or limitation of certification.

- A) Any certification issued by the Division may be suspended, summarily suspended, revoked, or limited for good cause in accordance with the Administrative Procedures Act, Section 24-4-101, et seq., C.R.S.
- B) Good cause for disciplinary sanctions listed in this Article (denial, revocation, suspension, annulment, limitation, or modification of certification) shall include, but not be limited to:
- (1) Evidence that the minimum standards for certification set forth in these rules have not been met.
  - (2) Material misstatement or misrepresentation on the application for certification.
  - (3) Proof of unfitness.
  - (4) Proof of individual's failure to meet, and continue to meet, performance standards at the level certified.
  - (5) Obtaining or attempting to obtain certification or recertification by fraud, misrepresentation, deception, or subterfuge.
  - (6) Materially altering any Division certificate, or using and/or possessing any such altered certificate.
  - (7) Unlawfully discriminating in the provisions of services based upon national origin, race, color, creed, religion, sex, age, physical or mental disability, sexual preference, or economic status.
  - (8) Representing qualifications at any level above the person's current certification level.

(9) Failure to pay required fees for certification.

10.4.3 In addition to those items listed in Rule 10.4.2.B, good cause for disciplinary sanctions listed in this Article (denial, revocation, suspension, annulment, limitation, or modification of certification) against the certification held by an exam proctor shall include, but not be limited to:

- A) Failure to adhere to the policies, procedures, and administrative requirements for delivery, documenting, test administration, and certification as adopted, administered and/or recognized by the Division.
- B) Failure to maintain security over written exams, including unauthorized access or reproduction of examination materials.

10.4.4 If the Division finds that grounds exist for the denial, revocation, suspension, annulment, limitation, or modification of certification of any applicant, action shall be taken according to the provisions of the Colorado Administrative Procedure Act, Section 24-4-101, et seq., C.R.S.

10.4.5 Upon the denial, revocation, suspension, annulment, limitation, or modification of any applicant, , all certificates, cards, patches or other identification issued by the Division for said certification and accreditation levels shall be returned to the Division.

## **ARTICLE 11 – Enforcement**

11.1 The Director of the Division shall enforce the requirements of the codes adopted in Article 3 in accordance with the provisions of Section 24-33.5-1213, C.R.S.

11.1.1 The Director may issue a notice of violation to a person who is believed to have violated the provisions of the Codes as determined by an inspection in accordance with the procedures described in Section 24-33.5-1213, C.R.S.

11.1.2 An enforcement order issued pursuant to Section 24-33.5-1213, C.R.S. may impose a civil penalty, depending upon the severity of the alleged violation, not to exceed five hundred dollars per violation, for each day of violation; except that the Director may impose a civil penalty not to exceed one thousand dollars per violation, for each day of violation, that results in, or may reasonably be expected to result in, serious bodily injury.

11.1.3 The Director may file suit in the district court in the judicial district in which a violation is alleged to have occurred to judicially enforce an enforcement order issued pursuant to Section 24-33.5-1213, C.R.S.

11.2 A person who is the subject of, and is adversely affected by, a notice of violation or enforcement order issued pursuant to Article 11 may appeal such action to the Executive Director of the Department of Public Safety. The Executive Director shall hold a hearing to review such notice or order and take final action in accordance with Title 24, Article 4, C.R.S. Final agency action shall be subject to judicial review pursuant to Title 14, Article 4, C.R.S.

11.3 It is not the intent of this Article 11 to remove, limit or modify enforcement authority of the fire department providing fire protection service for buildings or structures of a Board.

## **ARTICLE 12 – Appeals**

12.1 A Board who is the subject of, and is adversely affected by, a decision or interpretation made by an entity that conducts a plan review or inspection pursuant to Sections 22-32-124 or 23-71-



122(1)(v), C.R.S., may appeal such action to the Board of Appeals formed by Section 24-33.5-1213.7, C.R.S.

12.1.1 The affected Board shall first appeal to the plan review or inspection entity. After consideration, the entity shall issue its final written decision on the matter.

12.1.2 If the Board still disagrees, they may appeal to the Board of Appeals. The appeal shall be filed within thirty days after the date of the final written decision by the plan review or inspection entity. Upon receipt of an appeal, the Division shall notify the Chair of the Board of Appeals and schedule a hearing no more than fifteen days after the date the appeal was filed.

12.1.3 An application for appeal shall be based on a claim that the true intent of this code or the standards legally adopted therein have been incorrectly interpreted, the provisions of this code do not fully apply or an equally good or better form of construction is proposed. The Board of Appeals shall not waive any requirements of the codes or standards, however the Board of Appeals may recommend alternative materials or methods as provided in the codes or standards. The final written decision of the Board of Appeals is final agency action for purposes of section 24-4-106, C.R.S.

## **ARTICLE 13 – Fees and Charges**

13.1 Inspector Certification Fees: The Division shall charge the following fees for inspector certifications:

Inspector Certification Fees	
Certification of Inspectors by State examination	\$30.00
Certification of Inspectors equivalent qualification review	\$40.00
Renewal of Fire Inspector certification	\$20.00
Certification or renewal of Inspectors by reciprocity of equivalent ICC or NFPA certifications.	\$10.00

13.2 Plan review, construction permit and inspection fees.

13.2.1 The Director of the Division shall charge a fee for plan review and issuance of a permit to cover the actual, reasonable, and necessary expenses of the Division for those expenses related to the Public School Construction Program.

13.2.2 The plan review, construction permit and inspection fees are calculated based on the project valuation.

- A) The building inspection component of this fee in 13.2.4.A only includes an oversight (interim) inspection and a final inspection conducted by the Division prior to the issuance of a Certificate of Occupancy.
- B) The fire inspection component of the fee in 13.2.4.B includes the necessary rough and final inspections.
- C) Division inspection fees do not include costs associated with inspections conducted by local fire departments or third-party inspectors.

13.2.3 The Director of 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.

13.2.4 There are three levels of fees, based upon the services performed by the Division. A fee calculator also posted on the Division website, enables determination of total fees (plan review and construction permit fees, including inspection fees) prior to submittal of a project. The fee schedule applied to a project will be the fee schedule in effect on the date of application submittal.

A) Fees for Building Code reviews performed by the Division

Building Code Plan Review, Permit and Inspection Fees

Total Valuation	Fee
\$1.00 to \$2,000	\$50
\$2,001 to \$25,000	\$51 to \$647
\$25,001 to \$50,000	\$648 to \$1,064
\$50,001 to \$100,000	\$1,065 to \$1,598
\$100,001 to \$500,000	\$1,599 to \$4,337
\$500,001 to \$1,000,000	\$4,338 to \$6,532
\$1,000,001 to \$2,000,000	\$6,533 to \$9,345
\$2,000,001 to \$4,000,000	\$9,346 to \$12,952
\$4,000,001 to \$8,000,000	\$12,593 to \$17,577
\$8,000,001 to \$16,000,000	\$17,578 to \$23,505
\$16,000,001 to \$32,000,000	\$23,506 to \$31,105
\$32,000,001 to \$64,000,000	\$31,106 to \$40,848
\$64,000,001 +	\$40,849 +

- (1) Portable/Modular Building Fees per site: \$800.00 for the first unit, each additional portable/modular is \$100.00, up to 10 units.
- (2) Re-Roof: Use fee schedule above, \$800.00 minimum
- (3) Boiler/Chiller/Furnace/Air Handling Unit: Use fee schedule above, \$800.00 minimum
- (4) Annual Permit: \$500

B) Fees for **Fire Code reviews by the Division**

- (1) Fire Code Review Fees are equal to the project valuation cost multiplied

by a factor of \$0.000550, with a minimum fee of \$300.00.

- (2) Fire alarm system replacements use schedule above, with a minimum fee of \$750.00.

**C) Both Building and Fire Code Reviews performed by the Division**

- (1) Fees will equal the sum of both the Building review fees in Article 13.2.4.A and the Fire review fees in Article 13.2.4.B.

13.2.5 Fees are charged at the time of permit issuance. Inspections shall not be performed until the required fee has been paid.

13.2.6 Re-inspection fees: The Division may assess a \$200 re-inspection fee 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.

- A) This Article is not to be interpreted as requiring re-inspection fees the first time a job is rejected for failure to comply with the requirements of the adopted code. It is intended to control the practice of calling for inspections before the work is ready for such inspection or re-inspection.

13.2.7 Off-hours inspections: The Division may assess an off-hours inspection fee of \$200 for inspections requested outside of normal business hours.

- A) Normal inspection hours are Monday through Friday between 7:00 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.

13.2.8 The Division may assess a fee of \$100 for the replacement of a lost inspection record card.

13.3 Maintenance Inspection Fees: The following fees shall be charged for maintenance inspections performed by the Division:

Maintenance Inspection Fees	
0 – 150 Students	\$125
151 – 300 Students	\$250
301 – 450 Students	\$375
451 or more Students	\$500

13.3.1 Student counts for fees shall be based upon the current pupil membership data published at the time of the inspection by the Colorado Department of Education.

13.3.2 Fees are charged per address. Total student counts are considered for consolidated schools located at one address.

11.4.2 Failure to pay for Fire Code inspections performed shall result in a notice of violation and enforcement in accordance with Article 11 of this rule.

#### **ARTICLE 14 – Severability**

14.1 If any provision, or application of these rules are held invalid, all other provisions and applications of these rules, shall remain in effect.

#### **ARTICLE 15 – Inquiries**

15.1 All questions or requests for interpretation of these rules shall be submitted in writing to the Colorado Division of Fire Safety, Public School Program Administrator.

## Emergency Rule Justification for 08/13/2014 Adoption of Emergency Rules 8 CCR 1507-30

The purpose of this emergency rule change is to address an identified conflict between security and fire safety concerns of school boards. The revised provisions incorporated herein provide an alternative to prescriptive fire safety requirements in order to allow school personnel to safely respond to lockdown situations. A timeline is provided to allow school boards to budget for and implement methods which will effectively and prescriptively resolve fire safety concerns while fully meeting the security needs of the schools.

**John W. Suthers**

Attorney General

**Cynthia H. Coffman**

Chief Deputy Attorney General

**Daniel D. Domenico**

Solicitor General



**Ralph L. Carr**

Colorado Judicial Center

1300 Broadway, 10th floor

Denver, CO 80203

Phone 720-508-6000

**State of Colorado  
Department of Law**

**Office of the Attorney General**

Tracking number: 2014-00795

**Opinion of the Attorney General rendered in connection with the rules adopted by the  
Division of Fire Prevention and Control**

**on 08/13/2014**

**8 CCR 1507-30**

**FIRE CODE ENFORCEMENT AND CERTIFICATION OF FIRE INSPECTORS FOR PUBLIC  
SCHOOLS, CHARTER SCHOOLS AND JUNIOR COLLEGES**

The above-referenced rules were submitted to this office on 08/13/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

**John W. Suthers**

Attorney General

by Daniel D. Domenico

Solicitor General

August 27, 2014 16:49:49

## **Terminated Rulemaking**

**Department**

Department of Personnel and Administration

**Agency**

Executive Director of Department of Personnel and Administration

**CCR number**

1 CCR 109-2

**Tracking number**

2014-00624

**Termination date**

08/26/2014

**Reason for termination**

Substantive changes to proposed rates need to be made.

## **Terminated Rulemaking**

**Department**

Department of Regulatory Agencies

**Agency**

Division of Professions and Occupations - State Plumbing Board

**CCR number**

3 CCR 720-1

**Tracking number**

2014-00811

**Termination date**

08/19/2014

**Reason for termination**

Additional rulemaking items required, so will correct this small item as part of that process.



## **Terminated Rulemaking**

**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

**Tracking number**

2014-00739

**Termination date**

08/22/2014

**Reason for termination**

September Meeting of the Medical Services Board is cancelled. Rules will be scheduled for hearing on October 10th, TN 2014-00884.

## **Terminated Rulemaking**

**Department**

Department of Human Services

**Agency**

Adult Protective Services

**CCR number**

12 CCR 2518-1

**Tracking number**

2014-00331

**Termination date**

08/19/2014

**Reason for termination**

This rule-making was pulled from the original State Board agenda and re-noticed for a subsequent rule-making session under Tracking# 2014-00489.

## **Nonrulemaking Public Notices and other Miscellaneous Rulemaking Notices**

### **Department**

Department of Health Care Policy and Financing

### **Agency**

Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)



## **Department of Health Care Policy and Financing**

### **PUBLIC NOTICE**

**September 10, 2014**

#### **State Plan Amendment Regarding Medicare Cross Over Claims**

Effective October 1, 2014, the Department intends to clarify how claims are paid for individuals eligible for both Medicaid and Medicare services. The Department will continue reimbursing according to "lower of" pricing when the Medicare and Medicaid services/items are comparable. The proposed state plan amendment will clarify that when the services are not comparable, the Medicaid payment will be the sum of the Medicare coinsurance and deductible.

The Department is requesting authority from the Centers for Medicare and Medicaid Services (CMS) to incorporate these clarifications of payment methodology. The State Plan Amendment will request an effective date of October 1, 2014.

#### **General Information**

A link to this notice will be posted on the Department's web site <https://www.colorado.gov/hcpf> starting on September 10, 2014. Written comments may be addressed to: Director, Health Programs Office, Department of Health Care Policy and Financing, 1570 Grant Street, Denver, CO 80203.

## Calendar of Hearings

Hearing Date/Time	Agency	Location
09/30/2014 09:00 AM	Taxpayer Service Division - Tax Group	1375 Sherman St., Room 127, Denver, CO 80261
10/01/2014 09:00 AM	Taxpayer Service Division - Tax Group	1375 Sherman St., Room 127, Denver, CO 80261
10/01/2014 09:00 AM	Taxpayer Service Division - Tax Group	1375 Sherman St., Room 127, Denver, CO 80261
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10/01/2014 09:00 AM	Taxpayer Service Division - Tax Group	1375 Sherman St., Room 127, Denver, CO 80261
10/01/2014 09:00 AM	Taxpayer Service Division - Tax Group	1375 Sherman St., Room 127, Denver, CO 80261
10/02/2014 01:30 PM	Division of Professions and Occupations - Office of Speech-Language Pathology Certification	DORA, 1560 Broadway St, Room 110D, Denver, CO 80202
10/03/2014 10:00 AM	Income Maintenance (Volume 3)	Colorado Department of Human Services, Conference Room 4A/B, 1575 Sherman Street, Denver, CO 80203
10/03/2014 10:00 AM	Income Maintenance (Volume 3)	Colorado Department of Human Services, Conference Room 4A/B, 1575 Sherman Street, Denver, CO 80203
10/03/2014 10:00 AM	Food Assistance Program (Volume 4B)	Colorado Department of Human Services, Conference Room 4A/B, 1575 Sherman Street, Denver, CO 80203
10/03/2014 10:00 AM	Social Services Rules (Volume 7; At-risk Adults, Child Welfare, Child Care Facilities)	Colorado Department of Human Services, Conference Room 4A/B, 1575 Sherman Street, Denver, CO 80203
10/03/2014 10:00 AM	State and Veterans Nursing Homes (Volume 11)	Colorado Department of Human Services, Conference Room 4A/B, 1575 Sherman Street, Denver, CO 80203
10/07/2014 10:00 AM	Division of Oil and Public Safety	633 17th Street, Suite 500, Denver, CO 80202
10/08/2014 09:30 AM	Colorado State Board of Education	Colorado State Department of Education, State Board Room, 201 E. Colfax Avenue; Denver, CO 80203
10/08/2014 10:00 AM	Colorado State Board of Education	Colorado Department of Education, State Board Room, 201 E. Colfax Avenue, Denver, Co 80203
10/10/2014 09:00 AM	Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)	303 East 17th Avenue, 7th Floor, Denver, CO 80203
10/15/2014 09:00 AM	Division of Workers' Compensation	633 17th Street Suite 1200, Denver, CO 80202
10/15/2014 10:00 AM	Laboratory Services Division - Rules promulgated by the Colorado Board of Health	Sabin-Cleere Conference Room, Colorado Department of Public Health and Environment, Bldg. A, 4300 Cherry Creek Drive, South, Denver, CO. 80246
10/15/2014 10:00 AM	Health Facilities and Emergency Medical Services Division (1011, 1015 Series) - by Colo Bd of Health	Sabin-Cleere Conference Room of the Colorado Department of Public Health and Environment, Bldg. A, First Floor, 4300 Cherry Creek Drive, South, Denver
10/15/2014 10:00 AM	Health Facilities and Emergency Medical Services Division (1011, 1015 Series) - 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
10/15/2014 10:00 AM	Health Facilities and Emergency Medical Services Division (1011, 1015 Series) - 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
10/15/2014 10:00 AM	Health Facilities and Emergency Medical Services Division (1011, 1015 Series) - 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
10/15/2014 10:00 AM	Colorado State Board of Health	Sabin-Cleere Conference Room, Colorado Department of Public Health and Environment, Bldg. A, 4300 Cherry Creek Drive, South, Denver, CO. 80246
10/15/2014 10:00 AM	Health Facilities and Emergency Medical Services Division (1011, 1015 Series) - 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
10/16/2014 09:00 AM	Air Quality Control Commission	Colorado Dept of Public Health and Environment, 4300 Cherry Creek Drive South, Sabin Conference Room, Denver, Co 80246
10/22/2014 09:00 AM	Division of Professions and Occupations - State Plumbing Board	1560 Broadway, Suite 110D, Denver CO 80202
10/23/2014 09:00 AM	Motor Vehicle Dealer Board	Department of Revenue offices, Entrance B, Room 110, Board Commission Meeting Room, 1881 Pierce Street, Lakewood, Colorado.
10/23/2014 09:00 AM	Motor Vehicle Dealer Board	Department of Revenue offices, Entrance B, Room 110, Board Commission Meeting Room, 1881 Pierce Street, Lakewood, Colorado.
11/20/2014 09:00 AM	Air Quality Control Commission	Colorado Dept of Public Health and Environment, 4300 Cherry Creek Drive South, Sabin Conference Room, Denver, CO 80246
12/08/2014 10:00 AM	Water Quality Control Commission (1002 Series)	Florence Sabin Conference Room, CDPHE, 4300 Cherry Creek Drive South, Denver, CO 80246
12/08/2014 10:00 AM	Water Quality Control Commission (1002 Series)	Florence Sabin Conference Room, CDPHE, 4300 Cherry Creek Drive South, Denver, CO 80246
12/08/2014 10:00 AM	Water Quality Control Commission (1002 Series)	Florence Sabin Conference Room, CDPHE, 4300 Cherry Creek Drive South, Denver, CO 80246
12/08/2014 10:00 AM	Water Quality Control Commission (1002 Series)	Florence Sabin Conference Room, CDPHE, 4300 Cherry Creek Drive South, Denver, CO 80246

## Calendar of Hearings

Hearing Date/Time	Agency	Location
12/08/2014 10:00 AM	Water Quality Control Commission (1002 Series)	Florence Sabin Conference Room, CDPHE, 4300 Cherry Creek Drive South, Denver, CO 80246
12/08/2014 10:00 AM	Water Quality Control Commission (1002 Series)	Florence Sabin Conference Room, CDPHE, 4300 Cherry Creek Drive South, Denver, CO 80246
12/08/2014 10:00 AM	Water Quality Control Commission (1002 Series)	Florence Sabin Conference Room, CDPHE, 4300 Cherry Creek Drive South, Denver, CO 80246